(23,193)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 638.

WILLIAM H. WADKINS, NATURAL TUTOR OF EFFIE BELL WADKINS, MINOR, PLAINTIFF IN ERROR,

vs.

PRODUCERS OIL COMPANY AND ATLANTA & SHREVEPORT OIL AND GAS COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

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1 *Petition.*

To the Honorable the Judges of the First Judicial District Court of Louisiana in and for the Parish of Caddo:

The petition of W. H. Wadkins, Natural Tutor of the minor, Effie Bell Wadkins, with respect represents that he has been duly qualified and confirmed as Natural Tutor of the said minor and that letters as such have issued to him, and that he is duly authorized by judgment of this date, homologating the proceedings of the family meeting held in the interest of the said minor, to institute this suit.

Now, your petitioner shows that on the 24th day of June, 1894, your petitioner, W. H. Wadkins, married Mary Jane McCathron, a resident of Caddo Parish, Louisiana, and that from said marriage, two children were born, to-wit: Effie Bell Wadkins, who was born on the 28th day of March, 1895, and Mary Jane Wadkins, who was born on the 21st day of November, 1896.

Your petitioner shows that on the 25th day of February, 1895, during the existence of the community between him and his said wife, Mary Jane McCathron, he entered, under the homestead laws of The United States, from the United States of America, the Southeast quarter of Section Three (3) Township Twenty (20) North of Range Sixteen (16) West, Caddo Parish, Louisiana, containing 160 acres; that he continuously resided on the same, so as to comply with the homestead laws of the United States, and that patent finally issued to him, conveying the full title of the government unto the said community existing between your petitioner and his said wife.

Your petitioner shows that his wife, Mary Jane McCathron, died on the 6th day of December, 1896, leaving the said two children who thereby became owners of an undivided one-half interest in and to the said described property; that Mary Jane McCathron, the youngest child of the said marriage, died at the age of two years, that petitioner subsequently married, in 1902, and that by the death of Mary Jane Wadkins and by your petitioner's remarriage, the said minor, Effie Bell Wadkins, became the owner of the
2 full undivided one-half interest in the property above described, which has never been disposed of, but which still remains the property of said minor.

Now, your petitioner shows that certain parties, to-wit: The Shreveport & Atlanta Oil & Gas Company, a corporation under the laws of the State of Louisiana, and the Producers Oil Company, a corporation under the laws of the State of Texas, are in the possession of said property and refuse to deliver the same to your petitioner, as tutor for his said minor child, Effie Bell Wadkins, who owns an undivided one-half interest therein; that they have drilled an oil well on the said property which has produced to this date, over six hundred thousand (600,000) barrels of oil, for which they refuse to account to your petitioner and that they are drilling other wells thereon; and

that the said minor, represented by your petitioner as tutor, not only owns a half interest in said land, but also owns a one-half interest in all of the oil and other minerals that have been or may be extracted therefrom.

Wherefore, your petitioner prays that the said Producers Oil Company and the said Shreveport & Atlanta Oil & Gas Company be cited to answer hereto; and that after all legal delays and due proceedings had, your petitioner, in his official capacity as tutor for the said minor, Effie Bell Wadkins, have judgment recognibing the said minor as the owner of an undivided one-half interest in and to the Southeast quarter (S.E.¼) of Section Three (3), Township Twenty (20), Range Sixteen (16), Caddo Parish, Louisiana, and putting her in the possession thereof; that the said Producers Oil Company and the Shreveport & Atlanta Oil & Gas Company be ordered to account to your petitioner, as tutor, for all of the oil, gas and other minerals extracted or that *that* may be extracted from said land; and that your petitioner, as tutor for said minor, have judgment against them in solido, for the market value of one-half of all of the oil that has been produced up to date and for
3 all of the oil, gas and other minerals that may be produced from the said Southeast quarter (S.E.¼) of Section Three (3), Township Twenty (20) North of Range Sixteen (16) West, Caddo Parish, Louisiana, up to the time the said minor is put in possession of her property aforesaid.

He further prays for all necessary orders; and for general relief.

THIGPEN & HEROLD,
Attorneys for Petitioner.

Endorsed: Filed Dec. 3, 1910, A. S. Hardin, Dy. Clk.

4 In the First District Court, Parish of Caddo.

No. 14135.

W. H. WADKINS, Natural Tutor,
versus
PRODUCERS OIL Co. et al.

Citation to Producers Oil Co.

The State of Louisiana to Producers Oil Co. of the Parish of Caddo:

You are hereby cited to appear in the office of the Clerk of the said Court, in the City of Shreveport, Parish aforesaid, and comply with the demand contained in the petition, of which a copy is hereby annexed, or file your answer thereto in writing, in the office of the said Clerk, in ten days after the service hereof, with one additional day for every ten miles between your residence and the office of the Clerk; provided, however, that in no case shall the delay exceed fifteen days.

Witness, the Honorable T. F. Bell, Judge of said Court, this 3rd day of Dec. Anno Domini 1910.

A. S. HARDIN, *Dy. Clerk.*

Received the within Citation on the 5 day of December 1910, and on the 5 day of Dec. 1910 served the same on the within named Producers Oil Co. at their office in City of Shreveport — miles from the Courthouse, in the Parish of Caddo, State of Louisiana, by handling a certified copy hereof, together with a certified copy of plaintiff's and a certified copy of Plaintiff's contract petition, to W. R. Thomas. He being a male employee of said Co. over the age of 14 yrs. and in charge of the office of said Co. at time of service. First however I made inquiry for the Pres. Vice Pres. and Secy. and on being informed that they were absent, I made service.

A. F. HAYNES, *Dy. Shff.*

Endorsed: Filed Dec. 10, 1910, F. A. Leonard, Clerk.

5 In the First District Court, Parish of Caddo.

No. 14135.

W. H. WADKINS, Natural Tutor,
versus
PRODUCERS OIL Co. et al.

Citation to Shreveport & Atlanta Oil & Gas Co.

The State of Louisiana to Shreveport & Atlanta Oil & Gas Co. of the Parish of Caddo:

You are hereby cited to appear in the office of the Clerk of the said Court, in the City of Shreveport, Parish aforesaid and comply with the demand contained in the petition, of which a copy is hereby annexed, or file your answer thereto in writing, in the office of the said Clerk, in ten days after the service hereof, with one additional day for every ten miles between your residence and the office of the Clerk; provided, however, that in no case shall the delay exceed fifteen days.

Witness, the Honorable T. F. Bell, Judge of said Court, this 3rd day of Dec. Anno Domini, 1910.

A. S. HARDIN, *Dy. Clerk.*

Received the within citation on the 5th day of Dec. 1910, and on the 6th day of Dec. 1910, served the same on the within named Shreveport & Atlanta Oil & Gas Co. herein represented by E. B. Herndon, Agent or representative, in the Parish of Caddo, State of Louisiana, by handing a certified copy hereof, together with a certified copy of plaintiff's petition and copy of Plff's Contract, to E. B. Herndon, Agent or Representative in person.

PAUL D. MEANS, *Dy. Sheriff.*

Endorsed: Filed Dec. 10, 1910. F. A. Leonard, Clerk.

6 In First District Court, Caddo Parish, Louisiana.

No. 14135.

W. H. WADKINS, Natural Tutor,
vs.
PRODUCERS OIL COMPANY et al.

Answer of Producers Oil Co.

Now comes Producers Oil Company, one of the defendants in said cause, and demurs to the plaintiff's petition, says the same is insufficient in law and shows no cause of action against this defendant, and of this it prays judgment of the court.

And, in case the foregoing demurrer is overruled, and without waiving the same, this defendant denies all and singular the allegations contained in the plaintiff's petition, demands strict proof of the same, and of this it puts itself upon the country.

And, for further and special answer herein, this defendant says that William H. Wadkins actually entered upon the land described in the plaintiff's petition on or before the 12th day of December, 1893, under the homestead laws of the United States, said land being then of the public domain of the United States and subject to entry under said laws; that said William H. Wadkins was a single man when he so made such entry, and did not marry Mary Jane McCathron until several months thereafter; that, although the certificate of said homestead entry, as issued by the United States Government, bore date the 25th day of February, 1895, the true date of entry was as aforesaid, and in recognition of this fact a patent for said land to said William H. Wadkins, signed by President William McKinley, was issued as early as the 12th day of December, 1898, thereby fixing and determining the date of entry as being at least five years prior thereof; that this defendant is the owner and holder of a valid oil and gas mining lease upon said land executed by the Atlanta & Shreveport Oil & Gas Company and the Atlanta Oil &
7 Gas Company on the 13th day of April, 1910, a copy of which lease is hereto attached, marked "Exhibit A" and made a part hereof; that said lessors at the date of said lease claimed to own and did own said land in fee simple under a complete and perfect chain of mesne conveyances from and under said William H. Wadkins, and this defendant is now in possession of said land thereunder and is engaged in producing oil from the same; that this defendant therefore claims a title, right, privilege and immunity under the statutes of the United States, and particularly its title to said oil and gas and its right and privilege of producing and marketing the same, and its immunity from the claim asserted by the plaintiff, under the statutes of the United States, and particularly under the acts of Congress governing homestead entries on the public lands of the United States, and the issuance of titles therefor, and determining who shall take title in case of the death of husband or

wife, and whether, prior to the issuance of patent, there is a right or title which can pass by inheritance, devolutive or otherwise; that this defendant also claims its said title and immunity and its said rights and privileges under said patent and the authority exercised under the United States in the issuance of the same; and that under said statutes and the laws of the United States the minor, Effie Bell Wadkins, has no right, title or interest in the land described in the plaintiff's petition, and this defendant's defense under the facts alleged is in all respects perfect and complete. All of which it is ready to verify.

And, for further and special answer herein, this defendant says that the land described in the plaintiff's petition was patented to William H. Wadkins by the United States on the 12th day of December, 1898, the same having been public domain of the United States and subject to homestead entry, whereunder it was so patented; that the written patent so issued was filed for record in Caddo Parish, Louisiana, on or about the 5th day of Novem-
8 ber, 1904, and was on or about said date duly recorded in Conveyance Book 38 of said Parish, at page 123; that the interest of the plaintiff, Effie Bell Wadkins, if any she has, is a secret and unrecorded interest and was concealed and unknown until the institution of this suit; that on or about the 19th day of April, 1901, F. M. Greene, R. S. Allday, M. M. Pruitt, E. A. Allday, R. P. Dunklin and J. B. Roberts purchased said land from said patentee, paying him one thousand dollars therefor and taking his warranty deed in due and regular form, which deed was on said date duly recorded in Conveyance Book 27 of said parish at page 401; that thereafter on or about the 3rd day of July, 1901, said last mentioned grantees, for ninety-five hundred dollars cash and other valuable considerations received by them, sold, and, by an instrument in due and regular form, conveyed to the Atlanta & Shreveport Oil & Gas Company all the oil, gas and other minerals upon, in and under said land, with the right to enter upon the premises at any time for the purpose of mining and marketing such minerals, and said conveyance was on or about the 7th day of August, 1901, duly recorded in Conveyance Book 28 of said parish at page 257; that afterwards on 23rd day of April, 1910, for a valuable consideration received by them, the aforesaid immendiate grantees of William H. Wadkins, said Greene and others, made and delivered their conveyance to said Atlanta & Shreveport Oil & Gas Company of all their entire right, title and interest in and to the land in suit, and the instrument of conveyance was duly recorded on the 9th day of July, 1910, in Conveyance Book 59 of said parish at page 725; that on the 13th day of April, 1910, said Atlanta & Shreveport Oil & Gas Company joined by the Atlanta Oil & Gas Company—the latter claiming an interest in 5 acres of land and having acquired all title and valid claim not owned and held by said Atlanta & Shreveport Oil & Gas Company—for large and valuable considerations, as therein recited, made and entered into a lease contract with
9 this defendant whereby upon a royalty of one-eighth of all oil produced and two hundred dollars per annum for each

gas well while gas is being used or sold off the premises and one-eighth of any and all other minerals, this defendant was granted the right to extract and market the oil, gas and other minerals from said land, a copy of which lease is hereto attached, marked "Exhibit A" and made a part hereof; that each of these conveyances, as also this lease was accepted and paid in good faith without knowledge or notice of the plaintiff's title, if any she has, but in the full belief that said William H. Wadkins had acquired full and perfect title to said land under and by virtue of his said patent from the United States, as shown by the patent itself and the conveyance records of said parish, and that the conveyances from and under said William H. Wadkins passed good and perfect title, as shown by said records; that on the faith of its said lease this defendant has reasonably expended in the drilling of wells and development of said land for oil and gas the sum of twenty-five thousand dollars and is daily expending and must continue to expend further large sums of money in order to comply with its lease contract and protect the estate with which it is connected; and that, by reason of the facts herein alleged, the plaintiff should not be heard to assert against this defendant the secret interest of Effie Bell Wadkins, if any interest she has; or, if her title is sustained and she is allowed to assert the same against — this defendant should be reimbursed for all expenditures which it has made or may make under its said lease, and that the same should be declared a lien on the interest of said Effie Bell Wadkins.

Defendant further answering shows that it was through itself and under its lessors for them in possession as owner of the described premises in good faith and removed therefrom large quantities of oil in good faith and as owner thereof after having reduced said oil to possession through defendant's own operations and efforts, and said oil being a product of the soil secured by itself in good faith and holding as owner, defendant is entitled to same and owes no accounting to plaintiff in any manner.

Defendant further shows that it is entitled to have the Atlanta and Shreveport Oil Company and the Atlanta Oil and Gas Company, herein with it impleaded, called in warranty, and prays that citations issue to said Companies by service on S. B. Hicks, President, for the former, and E. B. Herndon, Agent, for the latter, and for such judgment against such warrantors as shall be rendered against it; and further that its rights be reserved to hereafter hold its warrantors for any amounts or penalties which may be properly due on account of the warranty.

Wherefore, the premises considered, defendant prays for judgment rejecting plaintiff's demand, and for such judgment against the warrantors as it is entitled to with reservation of all rights of action.

For all orders necessary in the premises, and for general relief.

A. L. BEATTY,
FRANK J. LOONEY,
Attorneys for Defendant Producers Oil Co.

11 EXHIBIT "A."

At a call meeting of the Directors of the Atlanta & Shreveport Oil & Gas Company, held on this the 13th day of April, 1910, at its principal office in Atlanta, Cass County, Texas, the following proceedings were had.

The meeting was called to order by L. F. Allday, President, and on call of the roll the following directors answered present: F. M. Greene, R. S. Allday, J. B. Roberts, P. H. Logan, L. F. Allday, the said number present constituting a quorum. The meeting was declared ready for business and the following resolution was offered by F. M. Greene.

"Resolved that; whereas, The Atlanta & Shreveport Oil & Gas Company are owners in fee of the title to all the minerals in and under 155 acres of land in the Southeast quarter of Section #3, Township 20 North Range 16 West, Caddo Parish, La., and whereas that said Company is anxious to lease said land for development and for the production of oil, gas and other minerals that may be contained therein. Same to be leased in community with Atlanta Oil & Gas Company's 5 acres.

Now, therefore, L. F. Allday, President, and W. F. Cameron, Secretary, are hereby authorized to execute a lease to the Producers Oil Company, a corporation of Houston, Harris County, Texas, on said tract of land wherein and whereby the said Atlanta & Shreveport Oil & Gas Company shall receive a bonus of $25.00 per acre, in cash and $25.00 per acre in proportion to acreage, that is: as 155 acres is to 160 acres of oil, if oil be produced from said premises, said second payment at $25.00 per acre to be made entirely out of the oil produced on said premises and not otherwise, and said Atlanta & Shreveport Oil & Gas Company are further to receive royalties in proportion to acreage as above stated as folloys: 1/6 royalty of the oil, $200.00 per annum for each gas well and 1/8 royalty on all other minerals which may be produced on said premises. The other details and stipulations on said contract to be left to the discretion of the said president and said
12 Secretary and the board of directors hereby ratifies and confirms the said lease so made by said President and secretary to which this resolution is attached and hereby made a part." Said resolution being put to a vote a quorum of said directors being present, all voted in favor thereof and same was declared passed and ordered spread upon the minutes of the record book of said corporation. There being no further business before the board on motion, it adjourned.

L. F. ALLDAY,
Pres. of Atlanta & Shreveport Oil & Gas Co.

W. F. CAMERON, *Secretary.*

I, W. F. Cameron, Secretary of The Atlanta and Shreveport Oil & Gas Company, do hereby certify that the above and foregoing constitutes a true and correct copy of the minutes of said meeting

as stated therein and the same is this day entered upon the minute book of said corporation.

In testimony whereof, I hereunto set my hand and seal of office this 13th day of April, 1910.

W. F. CAMERON,
Sec. of Atlanta & Shreveport Oil & Gas Co.

13 EXHIBIT A.

Meeting of the Directors of Atlanta Oil & Gas Company.

At a call meeting of The Atlanta Oil & Gas Company, a corporation domiciled at Atlanta, Texas, held at its principal office in Atlanta, Cass County Texas, on this the 13th day of April, 1910, the following proceedings were had.

The meeting was called to order by F. M. Greene, President, and on call of the roll the following directors answered present. F. M. Greene, R. S. Allday, A. Crossley, J. B. Roberts, R. P. Dunklin and B. H. Singletery, said number present constituting a quorum and the meeting was declared ready for business and the following resolution offered by R. S. Allday.

Resolved that whereas, The Atlanta Oil & Gas Company are the owners in fee simple title to five acres of land in Section #3, Township 20, Range 16, W. Caddo Parish, La., and whereas, said Company are also the owners of a well on said land with casing and piping in the same, and of a lot of machinery, piping, tools, fittings, etc., and are anxious to dispose of all of said personal property and to lease said land to the Producers Oil Company

Now, therefore, the President, F. M. Greene, and Secretary, W. F. Cameron, are hereby authorized to enter into a lease contract and execute the same with the Producers Oil Company, whereby said Atlanta Oil & Gas Company shall receive a bonus of $25.00 per acre in cash and a further bonus of $25.00 per acre to be paid out of Producers Oil Company's part of the oil produced from said premises and not otherwise and are further to receive $6500.00 in cash for said machinery, piping, tools and personal property, an inventory of which will be given to Producers Oil Company separately; and said Atlanta Oil & Gas Company is further to receive 1/6 royalty of all the oil produced from said premises in said lease in proportion to its acreage, that is as five acres *if* proportion to 160 acres, (this lease being made in community with Atlanta & Shreveport Oil & Gas Co.) and are further to receive $200.00
14 per well per annum in proportion to its acreage owned in said lease, and ⅛ of the net profits of any other minerals that may be produced from said premises in proportion to acreage owned in said lease. All other details being left to the discretion of said president and secretary.

Said resolution being put to a vote of the directors there being a quorum present, all voted for same unanimously, and the president declared said resolution passed and ordered same to be put upon the minutes of the record books of said Company.

There being no further business before the Board, on motion, it adjourned.

F. M. GREENE,
Pres. Atlanta Oil & Gas Co.

W. F. CAMERON,
Sec. Atlanta Oil & Gas Co.

Filed and Recorded April 15th, 1910.

15 EXHIBIT "A."

STATE OF TEXAS,
County of Cass:

This contract by and between Atlanta & Shreveport Oil & Gas Company, and Atlanta Oil & Gas Company, two corporations domiciled at Atlanta, Cass County, Texas, hereinafter styled first party, and Producers Oil Company, a corporation domiciled at Houston, Harris County, Texas, herein styled second party, witnesses: That first party being owner in fee of the minerals in and under 155 acres and also the owners in fee of the entire title to five acres of land situated in the State of La., Parish of Caddo, and being the Southeast quarter of Section #3, Township 20 North Range 16 W., and the said Atlanta & Shreveport Oil & Gas Company owning the title in fee to the minerals of 155 acres of said tract and the said Atlanta Oil & Gas Company owning the title in fee to the land of five acres of said tract containing in all 160 acres more or less;

Hereby lets and leases to second party all the premises hereinabove described for the purpose of using *any* occupying the same for drilling wells, mining and exploring thereon and therein for oil, gas, coal, water and other minerals and metal and for using and maintaining thereon all buildings, machinery, pipe lines, storage tanks and other structures, that may be necessary for the conduct of said business by second party, and the first party, acknowledging the large expenditure necessary to be made by second party in the business mentioned in this lease hereby warrants and defends the title to the above-described land, unto second party, its successors, assigns.

This lease shall continue in force for a period of twenty-five years and so long thereafter as oil, gas, coal and other minerals may be found upon said premises. The consideration for said lease being as follows, to-wit: The payment by Producers Oil Company to Atlanta & Shreveport Oil & Gas Company of the sum of
16 $3875.00 cash in hand, receipt of which is hereby acknowledged and the payment to the Atlanta Oil & Gas Company of $6625.00 cash in hand and receipt of which is hereby acknowledged, and the further agreement on the part of the Producers Oil Company to pay to said first party $25.00 per acre in proportion to acreage owned by each; the $25.00 per acre is an additional bonus, same to be paid to each company in proportion to acreage out of 5/12 of the oil produced from said premises and to be paid

as said oil is produced until the said $25.00 per acre is liquidated and fully paid, provided, however, that said last payment of $25.00 per acre is to be made out of production of oil as above named and in no other manner.

$6500.00 of said $6625.00 above enumerated is to be paid to Atlanta Oil & Gas Company in consideration for a bill of sale to all its personal property consisting of machinery, piping, tools, etc., as shown by inventory & by bill of sale.

The remainder of all the oil, gas, coal, water and other minerals not enumerated as royalties to first party herein and also the proceeds derived therefrom, shall belong to and are hereby expressly deeded to second party.

The royalty to be paid to First party under this lease shall be as to each and every mineral in proportion to the acreage owned by each company as follows, to-wit: 1/6 of all the oil produced and saved upon the premises delivered in tanks or pipe lines — which said well or wells may be connected. $200.00 per annum for each gas well while gas is being used or sold off the premises. 1/8 part of the net proceeds of any other minerals or metals that may be produced from said premises.

Second party shall have the right to use free of costs, any timber growing upon said premises for the construction of necessary buildings, derricks, etc., for the conduct of said business.

17 Second party shall also have the right to use free of costs, oil, gas, water and other minerals produced from said premises which may be necessary to run said machinery and conducting developments on said premises herein described.

Second party hereby obligates itself to begin drilling a well upon said premises within four months from this date and to continue said developments with due diligence to the completion of said well, and it is further understood that an average of one well to 20 acres shall be considered full development of said territory, and second party is herein obligated to begin the developments of successive wells within ninety days after the completion of each preceding well until the said territory is fully developed as avove specified, provided, however, that in case second party should fail to continue developments on successive wells as hereinbefore stated, and for any cause after drilling a number of wells conclude to discontinue developing, then it shall release unto first party 20 acres for each well not so drilled in accordance with the foregoing stipulations. The said land released to be selected at the option and discretion of second party.

Upon the termination of this lease from whatsoever cause second party shall have the right to remove from said premises all of its machinery and property placed thereon and therein.

This lease shall extend to and be binding upon the successors, asigns and legal representatives of the parties hereto. Executed by the President and Secretary of said corporations composing the first party respectively; being duly authorized thereto by resolution of their respective boards of Directors as shown by said resolutions

hereto attached and made part hereof. This done at Atlanta, Texas, this the 13th day of April, 1910.

ATLANTA & SHREVEPORT OIL & GAS CO., [SEAL.]
By L. T. ALLDAY, *Pres.*
W. F. CAMERON, *Sec.*

18 ATLANTA OIL & GAS CO.,
By F. M. GREENE, *President.*
W. F. CAMERON, *Sec.*
PRODUCERS OIL CO.,
By G. W. HARDY, *Agent.*

Witnesses:
T. F. PERKINS.
T. R. RICHEY.

STATE OF TEXAS,
County of Cass:

Before me, W. A. Powell, the undersigned authority on this day personally came and appeared L. F. Allday, President of the Atlanta & Shreveport Oil & Gas Company and W. F. Cameron, Secretary thereof, and also Secretary The Atlanta Oil & Gas Company, and F. M. Greene, President of The Atlanta Oil & Gas Company, known to me to be the persons whose names are subscribed to the foregoing instrument, who signed the same in my presence and in that of the two lawful witnesses, whose names — attached to the instrument and each of said parties acknowledge- to me and said witnesses that he executed said instrument as the act and deed of The Atlanta Oil & Gas Company for the purpose and consideration therein executed.

In faith whereof, I hereunto set my hand and seal this 13th day of April, 1910.

W. A. POWELL, [SEAL.]
Notary Public in and for Cass County, Texas.

Endorsed: Filed Jany. 7, 1911, D. P. Eubank, Dy. Clk.

19 In the First Judicial Dist. Court of the State of Louisiana.

Number 14135.

W. H. WADKINS, Natural Tutor,
vs.
PRODUCERS OIL COMPANY et al.

Answer of Atlanta & Shreveport Oil & Gas Co.

Now comes The Atlanta & Shreveport Oil & Gas Company, a corporation duly incorporated under laws of the State of Louisiana, with its domicile in the City of Shreveport, Louisiana, and for

answer to Plaintiff's petition, denies generally and specially each and every allegation therein contained, except what may be hereinafter admitted, Admits: Possession of the land in controversy as owner and avers:

The purchase of the land and the oil and mineral rights from W. H. Wadkins, and his assigns, on faith of the public records and statements made by him, for a good and sufficient consideration, which will more fully appear by reference to deeds from the said Wadkins and assigns to your respondents, which is, by reference, made part hereof; the date of the marriage, death of the wife, the birth of the children and the death of one child is admitted, as alleged, and your respondent further avers:

That the said William Henry Wadkins obtained the land in controversy under the homestead laws of the United States of America;

That the said W. H. Wadkins actually entered upon the said land described in Plaintiff's petition, on or before August 1st, 1893, and with the intention to enter it under the homestead laws of the United States, the said land being then a part of the public domain of the United States, and subject to entry under the said homestead law; All allegations of co-defendant as to federal question are adopted & made part hereof.

That the said Wadkins was at that time a single man, when he made said entry and took possession of the said land and that he did not marry Mary Jane McCathern until several months thereafter, as alleged in Plaintiff's petition.

That altho' the certificate of the said homestead entry, as issued by the United States Government, bears date of February, 25th, 1895, the true date of entry was as aforesaid, and in recognition of this fact, a patent for the said land to the said W. H. Wadkins was signed by President McKinley, issued December 12th, 1898, thereby fixing and determining date of entry as being at least five years prior thereto;

That it took possession of the said land as owner under its title, in good faith, believing its title to be good and sufficient, and that it has spent large sums of money, trying to develop the same for oil, amounting to more than Fifteen Thousand Dollars, ($15,000.00), and that its co-defendant and lessee has spent large sums of money in developing the said land, for oil, of which its chief value consists, amounting to thousands of dollars, which will be shown on the trial hereof. Your respondent further avers:

That, in good faith, it leased the land in controversy to its co-defendant, The Producers Oil Company, as will more fully appear by reference to the said lease recorded in Recorder's office of Caddo Parish, and, by reference made part hereof, and that in the event it is held that the said minor has any interest in the said land, which is specially denied, in no event, in equity, law, or good conscience should the said contract with the said Producers Oil Company be in any way interfered with, but an equitable and just adjustment of the said matter should be made in accordance with law, equity and good conscience.

Premises considered, your respondent prays:

That Plaintiff's demand be rejected at his cost, and your respondent be decreed to be the owner of the land in controversy, and entitled to possession and control thereof, and, in the event it is held that the said minor has any interest therein, then, and in that event, your respondent do have and recover judgment for pro rata portion
21 of all sums expended in developing the said land for oil and gas by your respondents or its lessee, and that in no event shall the contract with its co-defendant be interfered with, and that an equitable and just settlement of the matter should be decreed in accordance with law, equity and good conscience, and further prays for all orders, and decrees necessary in the premises and for general and special relief.

O'NEAL & ALLDAY,
HERNDON & HERNDON,
Attorneys for Atlanta & Shreveport Gas & Oil Co.

Endorsed: Filed Jan. 7, 1911, D. P. Eubank, Dy. Clerk.

22 In First Judicial District Court, Caddo Parish, La.

No. —.

W. H. WADKINS, Tutor,
vs.
PRODUCERS OIL COMPANY et als.

Petition for Subpœna Duces Tecum.

In the above entitled and numbered cause, Now comes the plaintiff and respectfully represents that he is advised that the books of account kept by the defendant, Producers Oil Company, in the city of Houston, Texas, the domicile of the said company, show the production of oil from the well drilled on the premises in controversy; and that he has no means of proving the said production except from the said books.

That it is absolutely necessary in the trial of the cause that such production be shown; and that the books of account kept by the said company in the city of Shreveport, he is informed, likewise show such production.

Wherefore, he prays that a subpœna duces tecum issue, directed to the Producers Oil Company, defendant herein, ordering it to produce in open court on Tuesday, the 31st day of January, 1911, the date fixed for the trial of this cause, the original books of account kept by it in the city of Shreveport, Louisiana, and in the city of Houston, Texas, showing the production of oil from the well known as "Atlanta Number One," and situated in the Southeast quarter (S. E. ¼) of Section Three (3), Township Twenty (20), Range Sixteen (16), Caddo Parish, Louisiana; and that on failure to produce the said books, the allegation of the petition as to the amount

of oil produced up to the date of the filing of the suit be taken as true.

THIGPEN & HEROLD,
Attorneys for the Plaintiff.

23 THE STATE OF LOUISIANA,
Parish of Caddo:

S. L. Herold being duly sworn, deposes and says that he is a member of the firm of Thigpen & Herold, attorneys for the plaintiff, W. H. Wadkins, tutor, and that the allegations in the above and foregoing motion are true.

S. L. HEROLD.

Sworn to and subscribed before me on this the 25th day of January, A. D. 1911.

JNO. D. WILKINSON,
Notary Public.

24 Considering the above and foregoing motion and the affidavit annexed, it is ordered that the Producers Oil Company do produce and file in open court on Tuesday, the 31st day of January, 1911, at ten o'clock a. m., the books of account in the City of Shreveport, Louisiana, and in the City of Houston, Texas, showing the production of oil from the well known as "Atlanta Number One," located in the Southeast quarter (S. *W.* ¼) of Section Three (3), Township Twenty (20), Range Sixteen (16), Caddo Parish, Louisiana; and that on its failure to produce the said original books, the allegation of the petition as to the amount of oil produced prior to the filing of the suit be taken for as confessed.

This done and signed at Chambers on this the 25th day of January, A. D. 1911.

E. W. SUTHERLIN,
Judge of First Judicial District Court,
Caddo Parish, La.

Endorsed: Filed Jany. 25, 1911. S. O. Williams, Dy. Clerk.

25 *Oil and Gas Lease.*

STATE OF LOUISIANA,
Parish of Caddo:

W. H. Wadkins, Tutor,
to
August Goldstein.

Lease.

Know all men by these presents:

That I, W. H. Wadkins, acting herein as natural tutor for the minor, Effie Bell Wadkins, by virtue of judgment of the First Judic-

ial District Court of Caddo Parish, Louisiana, of date December 3rd, 1910, homologating the proceedings of family meeting held on the date before G. W. Jack, Notary Public, have and do by these presents lease and let unto August Goldstein, a resident of Caddo Parish, Louisiana, hereinafter styled the lessee, his heirs and assigns, the land hereinafter described, with the full and absolute right to exploit the same for and to produce minerals therefrom; and also grant and convey all of the oil, gas and other minerals, as well as the exclusive right of drilling thereon for oil and gas, together with the right of way for and the right to lay pipe lines, to convey water, oils, steam and gas, and the right to have sufficient water, oil and gas from the premises to drill and operate any wells that it may bore, and the right to such other privileges as are reasonably requisite for the conduct of said operations, and the right to remove, at any time, from said premises, any and all property which may have been placed thereon by the said lessee, his heirs or assigns.

The said premises as to which this instrument does apply are described as follows:

The undivided one-half interest of the said minor in and to the Southeast quarter (S. E. ¼) of Section Three (3), Township Twenty (20), North of Range Sixteen (16) West; Caddo Parish, Louisiana.

To have and to hold unto the said —— ——, his heirs, and assigns, for the term and under the provisions as follows, to-wit:

26 First. The premises herein demised and leased being now in the possession of parties claiming adversely to the minor, and the minor being about to institute suit to recover an undivided one half interest, as aforesaid, and thereafter to demand partition of the said land in kind, these facts rendering it impossible for the lessee to begin operations until such recovery, the right is hereby granted unto the said lessee to begin operations for the drilling of a well for oil or gas on the said premises within a term of Sixty days from the date the minor's title to the said property shall be settled by final judgment and her share allot-ed to her in severalty by partition; the right being hereby granted, however, to begin such operations before said time, if the lessee so desires.

Second. If the lessee shall avail himself of the right hereby granted and begin operations as above stated, then he shall have the right to make as many attempts to find oil or gas as he pleases and to continue the exercise of such right as long as he pleases, even beyond said term, provided such attempts shall be successive in the sense; that until oil or gas is found *be found* in paying quantities, not more than sixty days shall elapse between the cessation or abandonment of work on one well and the beginning of work on another.

Third. If, in the exercise of the right hereby conferred, oil or gas be found in paying quantities on the said land, then the lessee shall deliver as royalty to the said lessor, free of expense, one-eighth (⅛) part of all the oil saved from that produced; such delivery to be made, either in tanks by the lessor provided, or into any pipe lines that may be connected with the well; and if any well on said prem-

ises produces gas in paying quantities, then the lessor shall be paid at the rate of Two Hundred ($200.00) Dollars per year for each and every such well, such payments to be made at the end of each such year.

27 Fourth. If, as a result of any explorations under this contract, any other minerals than oil or gas shall be found in quantities deemed by the lessee to be paying, then he shall have the right to mine for and produce the same, paying to the lessor what under all the circumstances may be reasonable royalty.

Fifth. It is expressly declared that if oil, gas or other minerals, or any of them be found in paying quantities, then the said lessee shall become at once vested with an estate in and to all of the minerals underlying said land, with the right to produce the same, and any and all of the same, as long as five years from such discovery, and as long, in addition thereto as anyone of said minerals shall be produced in paying quantities.

Sixth. It is agreed that oil or gas or other minerals be found in paying quantities and the lessee, his heirs and assigns, should conclude that he or they do not desire to operate longer under this lease, then the right is hereby conferred to surrender the same, upon the payment of One Hundred ($100.00) Dollars to the lessor; and such right of surrender shall also confer the right to remove any and all machinery placed thereon by the said lessee, his heirs or assigns.

Seventh. It is further agreed that all of the conditions and terms herein shall extend to the heirs, executors, legal representatives, successors and assigns of the parties lessor.

The said lessee has this day paid to the lessor the sum of Two Thousand and no/100 ($2,000.00) Dollars cash, the receipt whereof he does hereby acknowledge in his official capacity as natural tutor for the said minor; and the said lessee further agrees and binds himself, his heirs and assigns, that whenever and as soon as the lessor shall have recovered judgment recognizing her interest in the aforesaid property and setting apart her portion in severalty, he will then pay to the lessor, the additional sum of Five Thousand

28 ($5,000.00) Dollars in cash; and the payment above recited and the obligations above recited are hereby declared to be a full and adequate consideration and to be received in full satisfaction of any and every right hereby granted.

This done and signed by the parties in the presence of S. L. Herold and J. A. Thigpen, good and competent witnesses and me, the undersigned Notary, on this the 3rd day of December, A. D., Nineteen Hundred and Ten, in duplicate.

W. H. WADKINS.
AUGUST GOLDSTEIN.
E. WAYLES BROWNE,
Notary Public, Caddo Parish.

Attest:
S. L. HEROLD.
J. A. THIGPEN.

Endorsed: Filed and Recorded Dec. 3, 1910. A. S. Hardin, Dy. Cl'k. & Ex-Officio Dy. Recorder.

STATE OF LOUISIANA,
Parish of Caddo:

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appear on file and of record in my office.

Given under my hand and seal of office, this 10" day of February, 1911.

F. A. LEONARD,
Clerk and Ex-Officio Recorder.

Endorsed: Filed in 14135 Feb'y 11, 1911, A. S. Hardin, Dy. Clk.

29

In the First District Court.

No. 14135.

W. H. WADKINS, Tutor,
vs.
PRODUCERS OIL COMPANY et al.

STATE OF LOUISIANA,
Parish of Caddo:

Subpœna Duces Tecum.

To Producers Oil Company represented by C. P. Clayton:

You are hereby ordered to appear before said court and produce and file in open Court oif Tuesday the 31st day of January, 1911, at ten o'clock A. M., the books of account in the City of Shreveport, Louisiana, and in the City of Houston, Texas, showing the production of oil from the well known as "Atlanta Number One," located in the southeast quarter (S. E. ¼) of Section Three (3) Township Twenty (20) Range Sixteen (16) Caddo Parish, Louisiana.

And herein fail not under penalty of the law.

By order of the Court this 25th day of January, A. D. 1911.

S. O. WILLIAMS,
Deputy Clerk.

Received the within Writ of Subpœna Duces Tecum on the 26th day of Jan'y, 1911, and on the 27th day of Jan'y, 1911, I served the same on the within name- Producers Oil Co. at their office in the City of Shreveport, Caddo Parish, Louisiana, by handing a certified copy hereof to W. R. Thomas, Clerk of said Company; He being a person over the age of 14 years, and in charge of the office of said Co. at the time of service, First however I made inquiry for the President, Vice President, and Secretary and on being informed that they were absent at the time I made service, on the said W. R. Thomas in person.

PAUL D. MEANS,
Deputy Sheriff.

Endorsed: Filed Feb. 1" 1911, F. A. Leonard, Clerk.

3—638

30 In First Judicial Dist. Court, Caddo Parish, Louisiana.

No. 14135.

W. H. WADKINS, Tutor,
vs.
PRODUCERS OIL COMPANY et al.

Motion for Writs of Judicial Sequestration.

In the above entitled and numbered cause, Now comes the plaintiff, W. H. Wadkins, tutor of the minor Effie Bell Wadkins, and with respect represents:

That prior to and since the institution of this suit the defendants have extracted from the premises in controversy, enormous quantities of oil and are still extracting oil therefrom; that they are drilling additional wells on said property and at any date may bring in one or more of said wells, taking thereby from the said property the oil and gas thereunder.

Your mover shows that under the allegations of his petition and under the allegations of the defendants' answer, in which all of the substantial allegations of the petition are admitted, his ward, Effie Bell Wadkins, is the owner of an undivided one-half interest in and to the Southeast quarter (S. E. ¼) of Section Three (3), Township Twenty (20) North of Range Sixteen (16) West, Caddo Parish, Louisiana, and in and to all of the oil, gas and other minerals thereunder; that by its drilling operations as aforesaid, the defendants have taken and are now taking and are about to take much of the oil therefrom, thereby greatly impairing and diminishing the value of the property and taking the substance therefrom; and that your mover fears that the said defendants are not responsible financially for the oil so taken; and that it is necessary that writs of sequestration issue herein, in order to protect her rights in the premises.

Wherefore, considering that your mover is a minor and unable to give bond; and considering the judicial admissions contained in the defendants' answer, your mover prays that writs of judicial sequestration issue herein, directing the Sheriff of Caddo
31 Parish, Louisiana, to seize and take into his corporal possession all of the Southeast quarter (S. E. ¼) of Section Three (3), Township Twenty (20), Range Sixteen (16), Caddo Parish, Louisiana, including the wells on the same, and to hold the same under his corporal possession until further orders issue from the court herein.

And for such further orders as are necessary in the premises; and for general relief.

THIGPEN & HEROLD,
Attorneys for Plaintiff.

Considering the above and foregoing petition,
It is ordered that defendants show cause before Saturday, Feb.

11th, 1911, at 10 o'clock A. M., why writs of judicial sequestration issue herein, without bond, as prayed for; otherwise said writ will issue.

This done and signed at Chambers on this the 6th day of February, A. D., 1911

T. F. BELL,
Judge First Judicial District Court,
Caddo Parish, Louisiana.

Endorsed: Filed Feb'y 6, 1911. S. O. Williams, Dy. Clerk.

32 No. 14135.

W. H. WADKINS, Tutor,
vs.
PRODUCERS OIL Co. et al.

Answer of Producers Oil Co. to Rule to Show Cause.

Now into Court comes the Producers Oil Company in answer to rule to show cause and referring to the answer filed herein which is made part hereof shows that no record notice or any other notice of any claim by the minor herein was given, and that plaintiff's possession was in absolute good faith under a belief that its lessors were the undisputed owners of said property.

Further shows that the conduct of W. H. Wadkins, Tutor, in making divers transfers of land and mineral rights conduced to the belief that they as lessees were entitled to possession of said property.

They further show that they had in good faith actually drilled one well, which was a large producer, before any effort was made to dispute their possession, and were engaged in drilling a second well and that they had gone to great expense on said property, and had taken all the risk in seeking oil.

Further shows that the basic theory of a judicial sequestration under Code of Practice, Art. 274, is: "When one of the contending parties does not seem to have a more apparent right to the possession than the other."

Further answering it shows that there is absolutely no dispute as to the ownership of at least one half of the property in its lessors and that it has certain drilling obligations which would avoid the lease if not complied with and power to fulfill might be denied it by a judicial sequestration.

Further shows that other Companies in the business of drilling wells and producing oil are so drilling and producing on every side of the property sought to be sequestrated and such sequestration would subject the property in dispute to be drained. The location of said drilling and producing wells will be specifically shown on trial hereof.

33 Further shows that constant work is necessary on the premises to protect same and secure full production and protect wells drilled.

Further shows that plaintiff herein claims as heir of her mother who, under the allegation of the petition, was dead at the date of patent and final proof and was not married to petitioner's father at the date of original occupation, all of which is so alleged or necessarily implied in plaintiff's petition.

The possession of lessee defendant and lessor defendant being derived from the patentee under homestead entry who was not a partner in community at the inception of the entry, the occupation of the land nor at the date of final proof or patent. The Plaintiff admits possession in your defendant.

Further shows W. H. Wadkins, Tutor, entered into an agreement with one August Goldstein in which he made conveyance of the gas, oil and other minerals as produced, and obligated said Goldstein to deliver one-eighth of such production. That said lease was entered into under authorization of a family meeting and the Court and absolutely conveys for a large consideration to said Goldstein the produced Gas, Oil and other minerals so that petitioner has no rights therein. All of which fully appears by agreement copy of which as same appears in Conv. book 66, page 457, Caddo Parish, La., is hereto attached and made a part hereof.

Further shows that all rights any party may have can be fully protected by the ordinary proceedings by injunction and sequestration under which a petition must give bond to ensure defendant from loss and damage, and a judicial sequestration would put defendant's admitted rights in jeopardy.

Premises considered defendant, the Producers Oil Company, prays that the motion and rule be denied and a judicial sequestration be refused.

Respectfully,

A. L. BEATY,
F. J. LOONEY,
Att'ys.

Endorsed: Filed Feb'y 11, 1911, A. S. Hardin, D'y Cl'k.

34 In the First Judicial Dist. Court of the State of Louisiana.

Number 14135.

W. H. WADKINS, Tutor,
vs.
PRODUCERS OIL COMPANY, et al.

Answer of Atlanta & Shreveport Oil & Gas Co to Rule.

Now comes The Atlanta & Shreveport Oil & Gas Company, and, for answer to show cause why judicial sequestration should not issue in this case, avers:

That, as shown by Plaintiff's petition and its answer in this suit, it is the owner by title translative of property, and has been in the

actual, notorious and adverse possession of the said property for more than twelve months;

That they are now in the constructive possession of the said property, through its lessees and co-defendants, The Producers Oil Company, and there is no pretense that it is not the owner of an undivided one-half interest in the said land, and therefore only one-half interest in the said land is in controversy, and to sequester it would be to dispossess your respondent and to put the property in the possession of the Plaintiff. Your respondent avers:

That it is only receiving one-sixth of the oil produced, and in no event should writ of sequestration issue as to it, and further avers that it and its co-defendant are perfectly solvent, and able to respond to any demand made on them for oil produced, in the event it is held that Plaintiff herein has any interest therein, which is especially denied, and further avers:

That in no event should the said property be sequestered unless Plaintiff herein shall be required to give a bond in a sufficient amount to protect it from any damage or injury that would or might result from the sequestration, with good and solvent surety;

That oil and gas wells are being drilled all around the said land, which will, or might, or may, draw the oil from the said land; that it, through its lessees, has drilled two wells on the said land, and is now drilling a third one at a great outlay, exceeding Thirty
35 Thousand Dollars, ($30,000.00), all of which was and is necessary and prudent in order to protect its oil and gas interests in the said land. And for further answer adopts answer of its co-defendant Producers Oil Co. *non* inconsistent herewith.

Premises considered, prays that rule be discharged, but in the event sequestration is ordered that Plaintiff be required to give bond, conditioned according to law, to protect your respondent from any damage or loss, and further prays for all orders and decrees necessary and for general relief.

ALLDAY & O'NEAL,
HERNDON & HERNDON,
Attorneys for Defendant Co.

Endorsed: Filed Feb. 11, 1911. A. S. Hardin, Dy. Clerk.

36 In First Judicial Dist. Court of Caddo Parish, Louisiana.

Number 14135.

W. H. WADKINS, Tutor,
vs.
PRODUCERS OIL COMPANY.

Statement of Facts.

For the purpose of the trial of this cause, the counsel for the plaintiff and defendants have agreed on the following statement of facts:

It is admitted that William Henry Wadkins is the duly qualified tutor of the minor, Effie Bell Wadkins, and, as such is fully authorized to bring this suit.

It is admitted that William Henry Wadkins took possession of the Southeast Quarter (¼) of section three (3) Township twenty (20) North of Range Sixteen (16) West, Caddo Parish, Louisiana, on August 1st, 1893, with the intention and purpose of entering the same as a homestead, under the homestead laws of the United States; at which time the said land was United States land, subject to entry under the homestead laws; and at which time William Henry Wadkins was a single man, capacitated under the United States laws at that date to make said entry.

It is further admitted that on February 23rd, 1895, the said William Henry Wadkins filed his application for the entry under the homestead laws of the United States of the said Southeast quarter (¼) of section three (3), township twenty (20) range sixteen (16) and that on the 25th day of February, 1895, the entry was allowed, the certificate of entry was duly issued to him together with receipt for filing fees. At which time he was married to Mary Jane McCathron.

It is further admitted that final proof under said entry was made on September 19th, 1898; and that thereafter patent was issued to William Henry Wadkins, on the date as shown by certified copy of said patent to be filed with other documentary evidence in this cause.

It is further admitted that William Henry Wadkins married Mary Jane McCathron on June 24th, 1894, and that two children were born of said marriage; viz: Effie Bell Wadkins, the present
37 plaintiff, who was born on March 28th, 1895; and Mary Jane Wadkins, who was born on November 21st, 1896 and who died when she was about two years old.

It is admitted that Mary Jane McCathron, the wife of William Henry Wadkins and the mother of the plaintiff, Effie Bell Wadkins, died on December 5th, 1896, intestate.

It is admitted that William Henry Wadkins remarried in the year 1903.

It is agreed that certified copies of the application for homestead, affidavit, receiver's receipt, certificate of entry and all other papers leading up to the perfection of the homestead on said lands, certified to *be* H. H. Sanford, Recorder of the General Land Office, and certified copy of the patent to said lands, to be filed in evidence.

It is admitted that the Producers Oil Company, as lessee under the lease, from its co-defendant, The Atlanta-Shreveport Oil and Gas Company and Atlanta Oil & Gas Co., has drilled a well on the said property from which up to and including 31st day of January 1911 there had been produced and sold 501,494,11 bbls. of crude petroleum for which the defendants received the sum of Two hundred and six thousand six hundred and forty and 24/100 dollars ($206,640.24) and which is still producing and that other wells are being drilled thereon; five-sixths thereof going to the Producers Oil

Co., the balance to said lessors in the proportion of 155/160 and 5/160.

Counsel for Defendants offer in evidence the following documentary evidence:

Certified Copies of the following Deeds, to-wit:

From Wadkins to Green et als. as per Conveyance book 27, page 401;

From W. H. Wadkins et als. to Atlanta & Shreveport Gas & Oil Company, as per Conveyance Book 28—page 257.

From Atlanta & Shreveport Oil & Gas Company to Louisiana-Texas Oil & Pipe Line Company, as per Conveyance book 41, page 113;

38 From Louisiana-Texas Oil & Pipe Line Company to Atlanta Oil & Gas Company, as per Conveyance Book 59, page 3.

From Wadkins to Green as per Conveyance Book 45, Page 256;

From Green et als. to Atlanta & Shreveport Oil & Gas Company as per Conveyance Book 59, Page 725.

From Atlanta & Shreveport Oil & Gas Company and Atlanta Oil & Gas Co. to Producers Oil Company, as per Conveyance Book 59, Page 335.

THIGPEN & HEROLD,
Attorneys for Plaintiff.
ALLDAY & O'NEAL,
HERNDON & HERNDON,
Att'ys for Atlanta & Shreveport Oil Co.
A. L. BEATY,
FRANK J. LOONEY,
Attorneys for Defendants.

39 District Court, Caddo Parish.

No. 14135.

W. H. WADKINS, Tutor,
vs.
PRODUCERS OIL Co. et al.

For the purpose of trial of above cause, it is further agreed between Producers Oil Company and plaintiff, W. H. Wadkins, Tutor; that the Producers Oil Company has expended up to and including January 31st, 1911, in the drilling and equipment of wells on the Southwest quarter (S. E. ¼) of section three (3) township twenty (20) range sixteen (16) the sum of Thirty-three thousand nine hundred eighty three 95/100 33,983.95 dollars, as shown by the itemized statement filed and made a part of this suit and marked ——;

It is agreed that all of said sum is properly chargeable in favor of the Producers Oil Company up to and including January 31st, 1911, but that the right is especially reserved to the plaintiff herein in future proceedings or on final settlement, to require an account-

ing from Producers Oil Company for the items marked item No. 1 to Item No. 19 both inclusive in said statement and for the items for "D. T. investment" shown in said statement, plaintiff claiming that said items represent charges for tools and material not consumed in the drilling, for which credits should be made on said statement.

THIGPEN & HEROLD,
Attorneys for Plaintiff.
A. L. BEATY,
FRANK J. LOONEY,
Attorneys for Defendant, Producers Oil Company.

Endorsed: Filed Mch. 16, 1911, F. A. Leonard, Cl'k.

The statement herein referred to was omitted from the transcript by consent of all parties.

FRANK J. LOONEY,
Att'y for Producers Oil Co.
HERNDON & HERNDON,
Att'ys Atlanta & Shreveport O. & G. Co.
THIGPEN & HEROLD,
Att'ys for Plaintiff.

40 First Judicial District Court, Caddo Parish, La.

No. 14135.

W. H. WADKINS, Tutor,
vs.
PRODUCERS OIL COMPANY.

Judgment.

In this cause, by reason of the law and evidence being in favor thereof, and for the reasons orally assigned,

It is ordered, adjudged and decreed that the plaintiff Effie Bell Wadkins, represented herein by W. H. Wadkins, as Natural Tutor, be and she is hereby recognized as the sole heir of her mother Mary Jane Wadkins born McCathron, and that the property in controversy constituted an asset of the community existing between the said W. H. Wadkins and the said Mary Jane McCathron,

And further by reason of the law and evidence being in favor thereof, it is now ordered, adjudged and decreed that the said Effie Bell Wadkins, represented by her said natural tutor, be and she is hereby recognized as the owner of an undivided one-half (½) interest in and to the Southeast quarter (S. E. ¼) of section three (3) township twenty (20) North, range sixteen (16) West, Caddo Parish, La. together with all the buildings and improvements thereon, including the wells thereon drilled, and that she be put in possession of same.

And it is therefore, further ordered, adjudged and decreed that the said W. H. Wadkins as tutor of Effie Bell Wadkins, do have and

recover of and against the Producers Oil Company and the Atlanta & Shreveport Oil & Gas Company, in solido, the full sum of eighty-six thousand three hundred and twenty eight dollars and twenty-four cents ($86,328.24) with legal interest thereon from January 31st, 1911, and all costs of suit.

And it is further ordered, adjudged and decreed that the rights of said plaintiff Effie Bell Wadkins to a further accounting and recovery for the oil and gas produced from the said premises after the 31st day of January 1911, be and the same are hereby reserved.

41 And it is further ordered and decreed that there is also reserved to said plaintiff, Effie Bell Wadkins, the right to assert in further proceedings, her claim to credits for the amounts shown on the statement of expenses filed herein by Defendants, marked on the said statement Numbers 1 to 19 inclusive, aggregating the sum of twelve thousand six hundred and forty seven dollars and forty-two cents ($12,647.42), and also the various sums and amounts shown on said statement under the heading "D. T. Investment."

Thus done and read and signed in Open Court on this 1st day of April, 1911.

T. F. BELL, *Judge.*

Endorsed: Filed April 1st, 1911, A. S. Hardin, Dy. Cl'k. Recorded Mort. Bk. 28, pg. 477 on Apl. 1st, 1911. S. O. Williams, Dy. Cl'k & Ex. Off. Dy. Recorder.

42 In the First Judicial District Court of the State of Louisiana.

No. 14135.

W. H. WADKINS, Tutor,
vs.
PRODUCERS OIL CO., LTD., et al.

Motion for a New Trial.

Now comes the Defendants herein, The Producers Oil Company and suggests to the Court that the judgment herein rendered is contrary to the law and the evidence, and a new trial should be granted.

Premises considered, prays that a new trial be granted, and for all orders and decrees necessary in the premises and for general and special relief.

A. L. BEATY,
F. J. LOONEY,
Attorneys for Defendants.

Endorsed: Filed Apr. 1, 1911, A. S. Hardin, Deputy Clerk.

43 In the First Judicial District Court of the State of Louisiana.
Number 14135.

W. H. WADKINS, Tutor,
vs.
THE ATLANTA & SHREVEPORT OIL & GAS CO.

Motion for New Trial.

Now come the Defendants herein The Atlanta & Shreveport Oil & Gas Co., and suggest to the Court that the judgment herein rendered is contrary to the law and the evidence, and a new trial should be granted.

Premises considered, prays that a new trial be granted, and for all orders and decrees necessary in the premises and for general and special relief.

O'NEAL & ALLDAY,
HERNDON & HERNDON,
Attorneys for Defendants.

Endorsed: Filed Apr. 1, 1911, A. S. Hardin, Deputy Clerk.

44 In the 1st Judicial District Court, Caddo Parish, La.

No. 14135.

W. H. WADKINS, Tutor,
vs.
PRODUCERS OIL CO. et al.

Motion for Appeal on Part of Producers Oil Co.

Now into Court comes the Producers Oil Company defendant in the above numbered and entitled suit and shows that the Judgment rendered herein is manifestly erroneous and moves and prays that this Honorable Court grant an appeal suspensive and devolutive returnable to the Supreme Court of the State of Louisiana, according to law, from the judgment rendered herein by the District Court in favor of Effie Bell Wadkins, represented by W. H. Wadkins, as Natural Tutor and against the Producers Oil Company and fix the return day of the appeal and fix the suspensive and devolutive appeal bonds according to law. For all orders needed.

A. L. BEATY,
FRANK J. LOONEY,
Attorneys for Producers Oil Co.

Endorsed: Filed Apr. 12, 1911, A. S. Hardin, Deputy Clerk.

45 In the First Judicial District Court of the State of Louisiana.

Number 14135.

W. H. WADKINS, Tutor, et al.
vs.
PRODUCERS OIL COMPANY et al.

Motion for Appeal on Part of Atlanta & Shreveport Oil & Gas Company.

Now comes the Atlanta & Shreveport Oil & Gas Company, and moves the Court to grant it a suspensive and devolutive appeal from the judgment herein rendered to the Supreme Court of the State of Louisiana, returnable according to law, and that your Honor will fix the return day and the devolutive appeal bond.

Premises considered, prays suspensive and devolutive appeal be granted and return day fixed and the amount of the devolutive appeal bond, returnable to the Supreme Court of the State of Louisiana, according to law.

HERNDON & HERNDON,
Attorneys for Defendant.

Endorsed: Filed Apr. 12, 1911, A. S. Hardin, Deputy Clerk.

46 *Appeal Bond.*

STATE OF LOUISIANA,
Parish of Caddo:

Appeal Bond.

Know all men by these presents:

That we, Producers Oil Company, as principal, and The United States Fidelity and Guaranty Company of Maryland, as surety, are held and firmly bound unto F. A. Leonard, Clerk of the First Judicial District Court, Caddo Parish, Louisiana, in the full sum of One Hundred and Forty Thousand & no/100 ($140,000.00) Dollars, for payment of which, well and truly to be made, we bind ourselves, our heirs and legal representatives firmly and in solido by these presents.

Dated at Shreveport, La., this 13th day of April 1911.

The Condition of the above obligation is such, that, whereas, the above bounden Producers Oil Company has applied for and obtained an order for a suspensive and devolutive appeal from the judgment lately rendered against it by the Honorable First Judicial District Court, Caddo Parish, Louisiana, in the case of W. H. Wadkins, Tutor of the Minor Effie Bell Wadkins vs. Producers Oil Company et al. No. 14135 on the docket of said Court, returnable to the Honorable Supreme Court of Louisiana, at New Orleans, Louisiana, according to law;

Therefore, if the said Producers Oil Company shall well and truly prosecute *his* said appeal, and shall satisfy whatever judgment may

be rendered against it thereon, or the same be satisfied by the proceeds of the sale of its estate, real or personal, then this obligation to be null and void, otherwise to remain in full force and effect, and the said surety shall be liable in his place.

PRODUCERS OIL COMPANY,
By FRANK J. LOONEY, *Att'y.*
THE UNITED STATES FIDELITY & GUARANTY CO. OF MARYLAND,
By WM. M. FORD, *Attorney in Fact.*

Endorsed: Filed April 13, 1911, F. A. Leonard, Clerk.

47 *Appeal Bond.*

STATE OF LOUISIANA,
Parish of Caddo:

Appeal Bond.

Know all men by these presents:

That we, Atlanta and Shreveport Oil & Gas Company, as principal, and The United States Fidelity & Guaranty Co., of Maryland, as surety, are held and firmly bound unto F. A. Leonard, Clerk of the First Judicial District Court, Caddo Parish, Louisiana, in the full sum of One Hundred and Forty Thousand and No/100 ($140,000.00) Dollars, for payment of which, well and truly to be made, we bind ourselves, our heirs and legal representatives firmly and in solido by these presents.

Dated at Shreveport, La., this 13th day of April, 1911.

The Condition of the above Obligation is such that, whereas, the above bounden Atlanta & Shreveport Oil & Gas Company has applied for and obtained an order for a suspensive and devolutive appeal from the judgment lately rendered against it by the Honorable First Judicial District Court, Caddo Parish, Louisiana, in the case of W. H. Wadkins, Tutor of the Minor, Effie Bell Wadkins, vs. The Producers Oil Co. et al., The Atlanta and Shreveport Oil & Gas Co., being one of the Defendants therein No. 14135 on the docket of said Court, returnable to the Honorable Supreme Court of Louisiana, at New Orleans, Louisiana, according to law;

Therefore, if the said Atlanta and Shreveport Oil & Gas Company shall well and truly prosecute *his* said appeal, and shall satisfy whatever judgment may be rendered against it thereon, or the same be satisfied by the proceeds of the sale of its estate, real or personal, then this obligation to be null and void, otherwise to remain in full force and effect, and the said surety shall be liable in his place.

ATLANTA & SHREVEPORT OIL & GAS CO.,
Per HERNDON & HERNDON, *Att'ys.*
THE UNITED STATES FIDELITY & GUARANTY CO. OF MARYLAND,
By WM. M. FORD, *Attorney in Fact.*

Endorsed: Filed April 13, 1911, S. O. Williams, Deputy Clerk.

48 THE STATE OF LOUISANA,
Parish of Caddo:

W. H. Wadkins
to
F. M. Greene et al.

Int. in Land.

Be it known, That this day before me F. A. Leonard, Clerk and Ex-Officio Recorder and Notary Public, in and for said Parish, duly commissioned and sworn, came and appeared William Henry Wadkins of Atlanta, Texas who declared that he does by these presents grant, bargain, sell, convey and deliver, with full guarantee of title, and with complete transfer and subrogation of all rights and actions of warranty against all former proprietors of the property herein conveyed, unto F. M. Greene, R. S. Allday, M. M. Pruitt, E. A. Allday, R. P. Dunklen and J. B. Roberts of Atlanta, Texas the following described property, to-wit: Southeast quarter of Section Three in Township Twenty North, of Range Sixteen West of Louisiana Meridian, in Louisiana, containing One Hundred and Sixty acres. By this sale the said William Henry Wadkins conveys only an undivided interest in and to the above described property as follows:

To F. M. Greene—Two-Tenths interest.
To R. S. Allday—Two-Tenths interest.
To M. M. Pruitt—One-Tenth interest.
To E. Allday—One tenth interest.
To R. P. Dunklen—One-tenth interest.
To J. B. Roberts—One-tenth interest.

The said William Henry Wadkins reserving to himself the remaining two-tenths undivided interest to said property.

To have and to hold said described property unto said purchaser-, their heirs and assigns forever.

This sale is made for the consideration of the sum of One Thousand Dollars, cash in hand paid, receipt of which is hereby acknowledged.

The certificate of mortgages is hereby waived by the parties and evidence of the payment of taxes produced.

Done and passed at my office in the Parish of Caddo, in the
49 presence of J. H. Levy and F. C. O'Leary competent witnesses, on this the 19th day of April A. D. nineteen hundred and One.

WILLIAM HENRY WADKINS.
M. M. PRUITT.
F. M. GREEN.
R. S. ALLDAY.
R. P. DUNKLEN.
J. B. ROBERTS.
Per M. M. PRUITT, *Agent for All.*
F. A. LEONARD,
Clerk and Ex-Officio Recorder and Notary Public.

Attest:
J. H. LEY.
F. C. O'LEARY.

STATE OF LOUISIANA,.
Parish of Caddo:

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appear on file of record in my office.

Given under my hand and seal of office, this 16 day of Mch. 1911.

F. A. LEONARD,
Clerk and Ex-Officio Recorder.

Endorsed: Filed for Record Apl. 19th, 1901. F. A. Leonard, Clerk and Ex-Officio Recorder. Filed in evidence in 14135 Mch. 16, 1911. F. A. Leonard, Clk. Con. Book 27, p. 401.

50 THE STATE OF TEXAS,
County of Cass:

W. H. Wadkins et al.
to
The Atlanta & Shreveport Oil & Gas Co. Ltd.

Lands.

Know all men by these presents: We, Wm. H. Wadkins, R. S. Allday, E. A. Allday, J. B. Roberts, M. M. Pruitt and R. P. Dunklin of said County and State for and in consideration of the sum — Nine Thousand Five Hundred Dollars, ($9500.00) to us in hand paid by the Atlanta and Shreveport Oil and Gas Company Limited of Shreveport, Caddo Parish Louisiana, the receipt of which is hereby acknowledged, have bargained and sold, and by these presents do grant, bargain, sell and convey unto the said Atlanta and Shreveport Oil and Gas Company Limited and its assigns forever all of the Minerals, including oil, coal, gas and all other minerals, of what ever character upon a certain described tract of land in Caddo Parish and State of Louisiana and more fully described as follows: South East Quarter of Section Three, in Township Twenty North Range Sixteen West of Louisiana Meridian in Louisiana, containing One Hundred and Sixty acres.

And the said Atlanta and Shreveport Oil and Gas Company Limited and its assigns are hereby authorized to enter upon said premises, at any time, in the future for the purposes of mining and marketing said minerals conveyed herein. To have and to hold the minerals unto it the said Atlanta and Shreveport Oil and Gas Company Limited and its assigns forever in fee simple.

Given under our hands this the 3rd day of July A. D. 1911.

WM. H. WADKINS.
F. M. GREENE.
J. B. ROBERTS.
E. A. ALLDAY.
R. S. ALLDAY.
M. M. PRUITT.
R. P. DUNKLIN.

51 THE STATE OF TEXAS,
County of Cass:

Before me W. B. Figures a Notary Public in and for Cass County Texas, on this day personally appeared Wm. H. Wadkins, F. M. Greene, R. S. Allday, E. A. Allday, J. B. Roberts and M. M. Pruitt, known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they executed the same for the purpose and considerations therein expressed.

Given under my hand and seal of office this 3rd day of July, A. D. 1901.

W. B. FIGURES,
Notary Public, Cass Co., Texas.

STATE OF LOUISIANA,
Parish of Caddo:

Before me Frank J. Looney, a Notary Public in and for Caddo Parish on this day personally came and appeared R. P. Dunklin to me well known to be the person whose name is subscribed to the above and foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

R. P. DUNKLIN.

This given under my hand and seal of office this 7th day of August A. D. 1901 in the presence of T. F. Bell and D. T. Land good and competent witnesses.

FRANK J. LOONEY,
Notary Public in and for Caddo Parish, La.

Attest:

D. T. LAND.
T. F. BELL.

Endorsed: Filed and Recorded Aug. 7, 1901. J. H. Levy, Dy. Clerk and Ex-Officio Deputy Recorder. Recorded Con. Book 28, page 257.

STATE OF LOUISIANA,
Parish of Caddo:

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appear on file and of record in my office.

52 Given under my hand and seal of office, this 16" day of Mch., 1911.

F. A. LEONARD,
Clerk and Ex-Officio Recorder.

Endorsed: Filed in evidence in 14135 Mch. 16, 1911. F. A. Leonard, Clk.

53 THE STATE OF LOUISIANA,
Parish of Caddo:

Atlanta & Shreveport Oil & Gas Co., Ltd.,
to
La.-Tex. Oil & Pipe Line Co.

Lease.

Know all men by these presents that the Atlanta Shreveport Oil and Gas Company, Ltd., a private corporation duly incorporated under the laws of the State of Louisiana, with its principal office at Shreveport, in said Parish and State, for and in consideration of the sum of $500.00, to it in hand paid by the La.-Tex. Oil & Pipe Line Company, Ltd., the receipt of which is hereby acknowledged and confessed have granted and sold, and by these presents, do grant, bargain, sell and convey unto the said La.-Tex. Oil & Pipe Line Company, Ltd., of the Parish of Caddo, the State of Louisiana, and its assigns forever, all the minerals, including oil, coal, gas, and all other minerals of whatever character upon and within the described tract of land situated in the Parish of Caddo and State of Louisiana, and more fully described as follows:

5 acres of land in a square out of the N.E. corner of the East half of the N.W. quarter of Section 2, in township 20, North of range 16, West of Louisiana Meridian in Louisiana, and known as a part of the S. A. Wadkins' tract. And the said La.-Tex. Oil & Pipe Line Company, Ltd., and its assigns are hereby authorized to enter upon said premises at anytime in the future for the purpose of mining and marketing said minerals conveyed herein, to have and to hold the minerals unto the said La.-Tex. Oil & Pipe Line Company Ltd., and it- assigns forever in fee-simple.

In witness whereof the Atlanta Shreveport Oil and Gas Company Ltd. aforesaid have caused these presents to be signed by L. F. Allday, its President, thereunto authorized by a vote of said corporation and its common seal hereunto affixed this, the 22nd day of March, A. D. 1905.

THE ATLANTA & SHREVEPORT OIL AND GAS COMPANY, LTD.,
By L. F. ALLDAY, *Its President.*

54 Attest:
M. M. PRUITT, *Secretary.*

Witnesses:
A. Y. MATTHEWS,
J. M. O'REAR.

THE STATE OF TEXAS,
County of Caddo:

Before me, W. B. Figures, a Notary Public, in and for said County of Cass, State of Texas, on this day personally appeared L. F.

Allday to me well known, and acknowledged that the Atlanta Shreveport Oil & Gas Company Ltd. by him, the said L. F. Allday, its President, signed, sealed with its corporate seal, and delivered the foregoing deed for the purposes and consideration therein expressed. Given under my hand and seal of office this, the 22nd day of March, A. D. 1905.

W. B. FIGURES,
Notary Public.

Endorsed: Filed & Recorded May 1, 1906. S. O. Williams, Dy. Clk. & Ex-Off. Dy. Recorder. Recorded Con. Book 41, page 114.

STATE OF LOUISIANA,
Parish of Caddo:

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appear on file and of record in my office;

Given under my hand and seal of office, this 16" day of March, 1911.

F. A. LEONARD,
Clerk and Ex-Officio Recorder.

Endorsed: Filed in evidence in 14135 Mch. 16, 1911. F. A. Leonard, Clk.

55 No. 12298.

THE LOUISIANA AND TEXAS OIL & PIPE LINE COMPANY
vs.
THE ATLANTA OIL & GAS CO.

STATE OF LOUISIANA,
First Judicial District, Parish of Caddo:

The La.-Tex. Oil & Pipe Line Co.
to
The Atlanta Oil & Gas Co.

Land.

Whereas, I, J. P. Flourney, Sheriff and Ex Officio Auctioneer of the Parish of Caddo, by virtue of a writ of Fiera Facias to me directed by the Honorable, the First Judicial District Court in and for the Parish of Caddo, after having fulfilled and complied with all the legal requisites, did seize and take into my possession the following described real property, with all of the buildings and improvements thereon, situated in Caddo Parish, La., viz.:

An undivided one half interest in Five (5) acres of land in a

square out of the northeast corner of east half (E. ½) of northwest (N.W. ¼) quarter section Two (2) Township Twenty (20) North Range Sixteen (16) West (W) Louisiana Meridian known as part of the S. W. Watkins tract; also an undivided one-half interest in five (5) acres of land out of South-west corner of south-east quarter (S.E. ¼) of 160 acres of land in Section Three (3) Township Twenty (20), North, Range Sixteen (16) West Louisiana Meridian, in Louisiana, and being part of the W. H. Wadkins tract, said five acres to begin at the southwest corner of said southeast quarter (S. E. ¼) thence north 105 yards, thence east, thence South and west to place of beginning, so as to include five acres of land; also three acres of land in south-west corner of northeast quarter (N.E. ¼) of north-east quarter (N.E. ¼) of south quarter (S. ¼) Section Two (2) Township Twenty Range Sixteen (16) Caddo Parish La. Also three acres of land in the south-east corner of south-east quarter (S. E. ¼) of south-west quarter Section Thirty four (34) Township Twenty one (21) range Sixteen (16). Also an undivided
56 one-half interest in the engine, boilers, oil rig, together with all machinery pipe and fixtures on the premises, and, whereas, I gave due notice of the sale of said property, as follows:

To-wit: On the 14th day of December A. D. 1909 by advertisement in the English language, announcing the sale to take place at the principal front door of the Court House in the City of Shreveport, Parish of Caddo on Saturday January 15th A. D. 1910, which said advertisement was inserted and published in the Caucasian (a newspaper published in the City of Shreveport La.) towit: from the 14th day of December A. D. 1910 to the day of sale, being full thirty clear days from the date of the first notice given in said newspaper until the day of sale. And at said time and place within legal hours for sales, and after the writ, the advertisement and the mortgage certificate (a copy of which is annexed to and made part hereof) having been read aloud by me, and after complying with all requirements of the law, I exposed said property for sale at public auction for cash, according to law and at said offering Atlanta Oil and Gas Company, of Atlanta, Texas bids for said property Twelve Hundred and 00/100 ($1200.00) dollars and that this bid being the highest and best bid, the said before described property was adjudicated to the said Atlanta Oil and Gas Company of Atlanta Texas, for the said sum of Twelve Hundred and 00/100 ($1200.00) Dollars, which said sum was paid and applied as shown by my return and by receipt on the back of the Writ of Fieri Facias hereto attached and made part hereof.

Now therefore, Know all men by these presents, That I, J. P. Flournoy Sheriff of the Parish of Caddo, in consideration of the premises and by virtue of the laws of the State in such cases made and provided, do sell and transfer the said before described property to the said Atlanta Oil & Gas Co. and all the right and title which the said Louisiana & Texas Oil & Gas Co. had in or to the said before described property, to have and to hold the same to the said Atlanta Oil and Gas Co. their heirs and assigns forever.

57 In witness whereof, I have hereunto signed my name at Shreveport in the Parish of Caddo and State of Louisiana this 15th day of January A. D. Nineteen Hundred and Ten, (1910).

J. P. FLOURNOY,
Sheriff & Ex Officio Auctioneer,
Caddo Parish, La.

Signed in the presence of

E. B. HERNDON, Jr.
W. R. THOMAS.

Endorsed: Filed & Recorded Jany. 18, 1910. S. O. Williams, Dy. Clk. & Ex Officio Dy. Recorder. Recorded Con. Book 59, page 3.

STATE OF LOUISIANA,
Parish of Caddo:

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appears on file and of record in my office;
Given under my hand and seal of office, this 16" day of March 1911.

F. A. LEONARD,
Clerk and ex-Officio Recorder.

Endorsed: Filed in evidence in 14135 Mch. 16, 1911. F. A. Leonard, Clerk.

58 THE STATE OF LOUISIANA,
Parish of Caddo:

W. H. Wadkins
to
F. M. Greene.

Land.

Be it known, That this day before me, E. B. Herndon, Jr., Notary Public, in and for said Parish, duly commissioned and sworn, came and appeared Wm. H. Wadkins, a resident of Caddo Parish, Louisiana, who declared that he does by these presents grant, bargain, sell, convey and deliver, with full guarantee of title, and with complete transfer and subrogation of all rights and actions of warranty against all former proprietors of the property herein conveyed, unto F. M. Greene, a resident of Cass County, Texas, present accepting same the following described property, to-wit:
All his rights, titles and interest in and to the South East quarter of Section Three, Township Twenty North, Range Sixteen West not previously sold as shown by the records of Caddo Parish, La., together with all buildings and improvements thereon, all in Caddo Parish, Louisiana, The clause inserted after "not previously sold,"

which is, "as shown by the records of Caddo Parish" was inserted previous to this deed being signed by the parties thereto.

To have and to hold said described property unto said purchaser, his heirs and assigns forever.

This sale is made for the consideration of the sum of Ninety Six & No/100 Dollars, cash in hand paid, receipt of which is hereby acknowledged.

The certificate of mortgages is hereby waived by the parties and evidence of the payment of taxes produced.

Done and passed at my office in the Parish of Caddo, in the presence of E. B. Herndon and Ben Blumberg competent witnesses, on this the 18th day of February A. D. nineteen hundred and seven.

W. H. WADKINS,
F. M. GREENE,
E. B. HERNDON, Jr.
E. B. HERNDON, Jr.,
Notary Public.

Attest:
E. B. HERNDON.
BEN BLUMBERG.

59 Endorsed: Filed for Record Feb'y 18, 1907. S. O. Williams, D'y Clerk and Ex-Officio D'y Recorder. Recorded Con. Book 45, page 256.

STATE OF LOUISIANA,
Parish of Caddo:

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appears on file and of record in my office.

Given under my hand and seal of office, this 16 day of M'ch, 1911.

F. A. LEONARD,
Clerk and ex-Officio Recorder.

Endorsed: Filed in evidence in 14,135, M'ch 16, 1911. F. A. Leonard, Cl'k.

60 STATE OF TEXAS,
County of Cass:

F. M. Greene et als.
to
Atlanta & Shreveport Oil & Gas Co.

Land.

Know all men by these presents that we, F. M. Greene, R. S. Allday, E. A. Allday, L. F. Allday, J. B. Roberts and R. P. Dunklin, all of Cass County, Texas, and Mrs. M. O. Pruitt, surviving wife and sole heir of M. M. Pruitt, deceased, of Tom Green County, Texas,

for and in consideration of Fifty ($50.00) Dollars to us in hand paid by the Atlanta & Shreveport Oil & Gas Company, a private corporation under the laws of the State of Louisiana, the receipt whereof is hereby acknowledged, do by these presents sell, and convey unto the said Atlanta & Shreveport Oil & Gas Company all of our right, title and interest in One Hundred and Sixty acres of land in Caddo Parish, La., being the South East Quarter of Section No. 3, Township 20, North Range 16 W.: Being the William H. Wadkins survey.

To have and to hold unto said Company so that neither we, nor any one claiming under us shall have, or claim the same or any part thereof.

Witness our hands this 23rd day of April, 1910.

F. M. GREENE.
R. S. ALLDAY.
E. A. ALLDAY.
L. F. ALLDAY.
D. P. DUNKLIN.
J. B. ROBERTS.
Mrs. M. O. PRUITT.

Witnesses:
L. W. WILLIS.
LEO ILES.

Witnesses to signature of Mrs. M. O. Pruitt:
W. D. SPRINGER.
A. H. SCHOOLER.

STATE OF TEXAS,
County of Case:

Before me, the undersigned authority this day personally appeared F. M. Greene, R. S. Allday, E. A. Allday, L. F. Allday, J. B. Roberts, and R. P. Dunklin, to me well known, to be the per-
61 sons who subscribed the foregoing instrument and severally acknowledged to me that they had executed the same for the uses, purposes and considerations therein contained.

Given under my hand and Seal of Office this 23rd Day of April, 1910.

W. F. CAMERON,
Notary Public, Case County, Texas.

THE STATE OF TEXAS,
County of Tom Green:

Before me, W. A. Anderson, a Notary Public in and for Tom Green County, Texas, on this day personally appeared Mrs. M. O. Pruitt known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office, this 26 day of April, 1910.

W. A. ANDERSON,
A Notary Public in and for Tom Green County, Texas.

Endorsed: Filed and Recorded the 9 day of July, A. D. 1910. W. M. Levy, D'y Clerk and Ex-Officio Recorder. Recorded Con. Book 59, page 725.

STATE OF LOUISIANA,
Parish of Caddo:

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appear- on file and of record in my office.

Given under my hand and seal of office, this 16 day of M'ch, 1911.

F. A. LEONARD,
Clerk and ex-Officio Recorder.

Endorsed: Filed in evidence in 14,135, M'ch 16, 1911. F. A. Leonard, Cl'k.

62 *Meeting of Directors of the Atlanta & Shreveport Oil & Gas Co.*

Atlanta Oil & Gas Co. and Shreveport & Atlanta Oil & Gas Co.
to
Producers Oil Co.

Lease.

At a call meeting of the directors of The Atlanta & Shreveport Oil & Gas Company, held on this the 13th day of April, 1910, at its principal office in Atlanta, Cass County, Texas, the following proceedings were had:

The meeting was called to order by L. F. Allday, President, and on call of the roll the following directors answered present: F. M. Greene, R. S. Allday, J. B. Roberts, P. E. Hogan, L. F. Allday, the said number present constituting a quorum. The meeting was declared ready for business and the following resolution was offered by F. M. Greene:

"Resolved that: whereas, The Atlanta & Shreveport Oil & Gas Company are the owners in fee of the title to all the minerals in and under 155 acres of land in the Southeast quarter of Section #3, Township 20 North Range 16 W. Caddo Parish, La., and whereas the said Company is anxious to lease said land for development and for the production of oil, gas and other minerals that may be contained therein. Same to be leased in community with Atlanta Oil & Gas Co.'s 5 acres.

Now, therefore, L. F. Allday, President, and W. F. Cameron, Secretary, are hereby authorized to execute a lease to the Producers Oil Company, a corporation of Houston, Harris County, Texas, on said tract of land wherein and whereby the said Atlanta & Shreveport Oil & Gas Company, shall receive a bonus of $25.00 per acre, in cash and $25.00 per acre in proportion to acreage, that is: as 155 acres is to 160 acres of oil, if oil be produced from said premises,

said second payment of $25.00 per acre to be made entirely out of the oil produced on said premises and not otherwise, and said Atlanta & Shreveport Oil & Gas Company are further to receive royalties in proportion to acreage as above stated as follows: 1-6 royalty of the oil, $200.00 per annum for each gas well and 1-8 royalty on all other minerals which may be produced on said premises.
63 The other details and stipulations on said contract to be left to the discretion of the said president and said secretary and the board of directors hereby ratifies and confirms the said lease so made by said president and secretary to which this resolution is attached and hereby made a part." Said resolution being put to a vote a quorum of said directors being present, all voted in favor thereof and same was declared passed and ordered spread upon the minutes of the record book of said corporation. There being no further business before the board on motion it adjourned.

L. F. ALLDAY,
Pres. of Atlanta & Shreveport Oil & Gas Co.

W. F. CAMERON, *Secretary.*

I, W. F. Cameron, Secretary of The Atlanta & Shreveport Oil & Gas Company, do hereby certify that the above and foregoing constitutes a true and correct copy of the minutes of said meeting as stated therein and the same is this day entered upon the minute book of said corporation.

In testimony whereof, I hereunto set my hand and seal of office this the 13th day of April, 1910.

W. F. CAMERON,
Sec. of Atlanta & Shreveport Oil & Gas Co.

64 *Meeting of Directors of Atlanta Oil & Gas Company.*

At a call meeting of The Atlanta Oil & Gas Company a corporation domiciled at Atlanta, Texas, held at its principal office in Atlanta, Cass County, Texas, on this the 13th day of April, 1910, the following proceedings were had.

The meeting was called to order by F. M. Greene, President, and on call of the roll the following directors answered present: F. M. Greene, R. S. Allday, A. Crossley, J. B. Roberts, R. P. Dunklin and B. H. Singletery, said number present constituting a quorum and the meeting was declared ready for business and the following resolution was offered by R. S. Allday:

Resolved that whereas, The Atlanta Oil & Gas Company are the owners of the fee simple title to five acres of land in Section # 3, Township 20 Range 16 W. Caddo Parish, La., and whereas, said company are also the owners of a well on said land with casing and piping in the same, and of a lot of machinery, piping, tools, fittings, etc., and are anxious to dispose of all of said personal property and to lease said land to the Producers Oil Company,

Now, therefore, the President, F. M. Greene and Secretary, W. F. Cameron, are hereby authorized to enter into a lease contract and

execute the same with Producers Oil Company, whereby said Atlanta Oil & Gas Company shall receive a bonus of $25.00 per acre in cash, and a further bonus of $25.00 per acre to be paid out of Producers Oil Company's part of the oil produced from said premises and not otherwise and are further to receive $6500.00 in cash for said machinery, piping, tools and personal property, an inventory of which will be given to Producers Oil Company separately; and said Atlanta Oil & Gas Company is further to receive 1-6 royalty of all the oil produced from said premises in said lease in proportion to its acreage, that is as five acres in proportionated to 160 acres,
(this lease being made in community with Atlanta & Shreve-
65 port Oil & Cas Co.) and are further to receive $200.00 per gas well per annum in proportion to its acreage owned in said lease, and 1-8 of the net profits of any other minerals that may be produced from said premises in proportion to acreage owned in said lease. All other details being left to the discretion of said president and secretary.

Said resolution being put to a vote of the directors there being a quorum present, all voted for the same unanimously, and the president declared said resolution passed and ordered same to be put upon the minutes of the record books of said Company. There being no further business before the board on motion it adjourned.

F. M. GREENE,
Pres. of Atlanta Oil & Gas Co.

W. F. CAMERON,
Sec. of Atlanta Oil & Gas Co.

I, W. F. Cameron, Secretary of Atlanta & Shreveport Oil & Gas Company do hereby certify that the above and foregoing constitutes a true and correct copy of the minutes of said meeting as stated therein and the same is this day entered upon the minute book of said corporation.

In testimony -hereof, I hereunto set my hand and seal of office this the 13th day of April, 1910.

W. F CAMERON,
Sec. of Atlanta & Shreveport Oil & Gas Co.

66 STATE OF TEXAS,
County of Cass:

This contract by and between Atlanta & Shreveport Oil & Gas Company, and Atlanta Oil & Gas Company, two corporations domicild at Atlanta, Cass County, Texas, hereinafter styled first party, and Producers Oil Company a corporation domiciled at Houston, Harris County, Texas, herein styled second party, witnesses that first party being the owner in fee of the minerals in and under 155 acres and also the owner in fee of the entire title to five acres of land situated in the State of La., Parish of Caddo and being the Southeast quarter of Section #3, Township 20, North Range 16 W., and the said Atlanta & Shreveport Oil & Gas Company owning the title in fee to the minerals of 155 acres of said

tract and the said Atlanta Oil & Gas Company owning the title in fee to the land of five acres of said tract containing in all 160 acres more or less;

Hereby lets and leases to second party all the premises herein above described for the purpose of using and occupying the same for drilling wells, mining and exploring thereon and therein for oil, gas, coal, water and other minerals and metal and for using and maintaining thereon all buildings machinery, pipe lines, storage tanks and other structures, that may be necessary for the conduct of said business by second party and the first party acknowledging the large expenditure necessary to be made by second party in the business mentioned in this lease hereby warrants and defends the title to above described land, unto said second party, its successors, assigns.

This lease shall continue in force for a period of twenty-five years and so long thereafter as oil, gas, coal and other minerals may be found upon said premises. The consideration for said lease being as follows, to-wit: The payment by Producers Oil Company
67 to Atlanta & Shreveport Oil & Gas Company of the sum of $3,875.00 cash in hand, receipt of which is hereby acknowledged and the payment to Atlanta Oil & Gas Company of $6,625.00 cash in hand and receipt of which is hereby acknowledged, and the further agreement on the part of Producers Oil Company to pay to said first party $25.00 per acre in proportion to the acreage owned by each; the $25.00 per acre is an additional bonus, same to be paid to each company in proportion to acreage out of 5/12 of the oil produced from said premises and to be paid as the said oil is produced until the said $25.00 per acre is liquidated and fully paid, provided, however, that said last payment of $25.00 per acre is to be made out of production of oil as above named and in no other manner.

$6500.00 of said $6625.00 above enumerated is paid to Atlanta Oil & Gas Company in consideration for a bill of sale to all its personal property consisting of machinery, piping; tools, etc., as shown by inventory & by bill of sale.

The remainder of all the oil, gas, coal, water and other minerals not enumerated as royalties to first party herein and also the proceeds derived therefrom, shall belong to and are hereby expressly deeded to second party.

The royalty to be paid to First party under this lease shall be as to each and every mineral in proportion to the acreage owned by each company as follows, to-wit: 1/6 of all the oil produced and saved upon the premises delivered in tanks or pipe lines — which said well or wells may be connected. $200.00 per annum for each gas well while gas is being used or sold off of the premises. ⅛ part of the net profits of any other minerals or metals that may be produced from said premises.

Second party shall have a right to use free of cost, any timber growing upon said premises for the construction of necessary buildings, derricks, etc., for the conduct of said business.

68 Second party shall also have the right — use free of cost, oil, gas, water and other minerals produced from said premises which may be necessary to run said machinery and conducting developments on said premises herein described.

Second party hereby obligates itself to *being* drilling a well upon said premises within four months from this date and to continue said developments with due diligence to the completion of the said well, and it is further understood that an average of one well to 20 acres shall be considered full development of said territory, and second party is herein obligated to begin the developments of successive wells within ninety days after the completion of each p*roceeding* well until the said territory is fully developed as above specified, provided, however, that in case second party should fail to continue developments on successive wells as herein before stated, and for any cause after drilling a number of wells conclude to discontinue developing, then it shall release unto first party 20 acres for each well not so drilled in accordance with the foregoing stipulation. The said land released to be selected at the option and discretion of second party.

Upon the termination of this lease from whatsoever cause second party shall have the right to remove from said premises all of its machinery and property placed thereon and therein.

This lease shall extend to and be binding upon the successors, assigns, and legal representatives of the parties hereto. Executed by the President and secretary of said corporations composing first party respectively; being duly authorized thereto by resolution of their respective boards of directors as shown by said resolutions hereto attached and made a part hereof. This done at Atlanta, Texas, this the 13th day of April 1910.

69 ATLANTA AND SHREVEPORT OIL AND GAS CO.,
By L. F. ALLDAY, *"Pres."*
W. F. CAMERON, *Sec.*
ATLANTA OIL AND GAS CO.,
By F. M. GREENE, *President.*
W. F. CAMERON, *Sec.*
PRODUCERS OIL CO.,
By G. W. HARDY, *Agent.*

Witnesses:

T. F. PERKINS.
L. R. RICHEY.

STATE OF TEXAS,
County of Cass:

Before me W. A. Powell the undersigned authority on this day personally came and appeared L. F. Allday, President of Atlanta & Shreveport Oil & Gas Company and W. F. Cameron, Secretary thereof and also secretary of The Atlanta Oil & Gas Company, and F. M. Greene, President of The Atlanta Oil & Gas Company, known to me to be the persons whose names are subscribed to the foregoing

instrument, who signed the same in my presence and in that of the two lawful witnesses, whose names — attached to said instrument and each of said parties acknowledged to me and said witnesses that he executed said instrument as the act and deed of The Atlanta Oil & Gas Company for the purpose and considerations therein executed.

In faith whereof I hereunto set my hand and seal this 13th day of April, 1910.

W. A. POWELL,
Notary Public in and for Cass County, Texas.

Endorsed: Filed & Recorded Ap'l 18, 1910. S. O. Williams, D'y Clerk & Ex Off. D'y Recorder. Recorded Con. Book 59, page 335.

STATE OF LOUISIANA,
Parish of Caddo:

I hereby certify that the above and foregoing is a true and correct copy of the original act, as the same now appear on file and
70 of record in my office.

Given under my hand and seal of office, this 16" day of M'ch 1911.

F. A. LEONARD,
Clerk and ex-Officio Recorder.

Endorsed: Filed in evidence in 14135 M'ch 16, 1911. F. A. Leonard, Clerk.

71 *Minutes of the Court.*

STATE OF LOUISIANA,
Parish of Caddo:

Be it remembered that the regular term of the First District Court of Louisiana, in and for the Parish of Caddo was begun and held at the Court House in the City of Shreveport, Louisiana in said Parish on Monday, September 5th, 1910, it being the First Monday in said Month, when the following orders were made and proceedings had to-wit.

Present: Their Honors Judges T. F. Bell and A. J. Murff Presiding, J. P. Flournoy, Sheriff and F. A. Leonard, Clerk.

SHREVEPORT, LA., SATURDAY, *January 7th*, 1911.

Court met pursuant to adjournment.
Their Honors Judges Bell and Sutherlin presiding.
The Minutes of yesterday were read and approved in open Court.

14135.

W. H. WADKINS, Tutor,
VS.
PRODUCERS OIL CO. et al.

Answer of Defendant Atlanta & Shreveport Oil & Gas Co. filed.
Answer of Defendant Producers Oil Co. filed.

72 SHREVEPORT, LA., SATURDAY, *February 11th*, 1911.

Court met pursuant to adjournment.
Their Honors Judges Bell and Sutherlin Presiding.
The Minutes of yesterday were read and approved in open Court.

14135.

W. H. WADKINS, Tutor,
VS.
PRODUCERS OIL CO. et al.

Answer of Atlanta & Shreveport Oil and Gas Co. filed.

SHREVEPORT, LA., THURSDAY, *March 16th*, 1911.

Court met pursuant to adjournment.
Their Honors Judges Bell and Sutherlin presiding.
The Minutes of yesterday were read and approved in open Court.
Before His Honor Judge Bell.

14135.

W. H. WADKINS, Tutor,
VS.
PRODUCERS OIL CO. et al.

Call in Warranty withdrawn without prejudice.
Case argued and taken under advisement.

73 SHREVEPORT, LA., WEDNESDAY, *March 29th*, 1911.

Court met pursuant to adjournment.
Their Honors Judges Bell and Sutherlin presiding.
The Minutes of yesterday were read and approved in open Court.

14135.

W. H. WADKINS, Tutor,
VS.
PRODUCERS OIL CO. et al.

Judgment Plaintiff, See Decree.

SHREVEPORT, LA., SATURDAY, *April 1st*, 1911.

Court met pursuant to adjournment.
Their Honors Judges Bell and Sutherlin presiding.
The Minutes of yesterday were read and approved in open Court.

14135.

W. H. WADKINS, Tutor,
vs.
PRODUCERS OIL Co. et al.

Judgment signed.
Motion New Trial on Behalf of All Defendants filed.

74 SHREVEPORT, LA., MONDAY, *April 10th*, 1911.

Court met pursuant to adjournment.
Their Honors Judges Bell and Sutherlin presiding.
The Minutes of Saturday were read and approved in open Court.
Before His Honor Judge Bell:

14135.

W. H. WADKINS, Tutor,
vs.
PRODUCERS OIL Co. et al.

Motion for New Trial argued and taken under advisement.

SHREVEPORT, LA., WEDNESDAY, *April 12th*, 1911.

Court met pursuant to adjournment.
Their Honors Judges Bell and Sutherlin presiding.
The Minutes of yesterday were read and approved in open Court.

14135.

W. H. WADKINS, Tutor,
vs.
PRODUCERS OIL Co. et al.

Motion for New Trial overruled.
Motion for Appeal filed on behalf of both Defendants and Appeal granted, returnable to the Honorable the Supreme Court of the State of Louisiana, the First Monday in May, 1911, Suspensive Bond for Each Defendant fixed at $140,000.00 and Devolutive Bond at $150.00.

75 *Clerk's Certificate.*

STATE OF LOUISIANA,
Parish of Caddo:

I hereby certify that the above and foregoing pages from 1 to 74 inclusive, contain with the originals annexed, a true, complete and correct copy of all papers filed, orders made, and proceedings had in Case No. 14135 on the Docket of the First Judicial District

Court of Louisiana, wherein W. H. Wadkins, tutor is Plaintiff and Producers Oil Co. et al., Defendant.

Except such as are omitted by agreement of Counsel.

Givevn under my hand and seal of office this — day of April, A. D. 1911.

[SEAL.] A. S. HARDIN,
D'y Clerk, First District Court of La.

76 4–207r.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *Dec.* 30, 1910.

I hereby certify that the annexed copies of papers filed with Natchitoches, La., F. H. E. No. 3078, are true and literal exemplifications from the originals in this office.

In testimony whereof I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[SEAL.] (Signed) H. D. SANFORD,
Recorder of the General Land Office.

77 (4–007.)

Application No. 6103.

Homestead.

LAND OFFICE AT NATCHITOCHES, LA.,
February 23*d*, 1895.

I, Wm. Henry Wadkins, of Caddo Parish, La., Mooringsport P. O., do hereby apply to enter, under Section 2289, Revised Statutes of the United States, the S. E. ¼ of Section 3, in Township 20 N. of Range 16 W., containing 160.00 acres.

WILLIAM HENRY WADKINS.

LAND OFFICE AT NATCHITOCHES, LA.,
February 25, 1895.

I, Edward Phillips, Register of the Land Office, do hereby certify that the above application is for Surveyed Lands of the class which the applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same.

EDWD. PHILLIP, *Register.*

(Endorsed on Reverse:) (4-007.) No. 6103. Homestead application. William Henry Wadkins, Natchitoches, La., Feb'y 25, 1895. Section 3, Town 20 N, Range 16 W. 13-87.

78 4–063.

Homestead Affidavit.

U. S. LAND OFFICE AT NATCHITOCHES, LA.,
February 23d, 1895.

I, William Henry Wadkins, of Caddo having filed my application No. 3103, for an entry under section 2289, Revised Statutes of the United States, do solemnly swear that I am not the proprietor of more than one hundred and sixty acres of land in any State or Territory; that I am a native born citizen of the United States, over 21 years of age and the head of a family; that my said application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that I am not acting as agent of any person, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that I do not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for myself, and that I have not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation, or syndicate whatsoever, by which the title which I might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except myself, and further, that since August 30, 1890, I have not entered under the land laws of the United
79 States, or filed upon, a quantity of land, agricultural in character, and not mineral, which, with the tracts now applied for, would make more than three hundred and twenty acres, except —— and that I have not heretofore made any entry under the homestead laws.

(Sign plainly with full Christian name.)

WILLIAM HENRY WADKINS.

Sworn to and subscribed before me this 23rd day of February, 1895, at my office at Shreveport in Caddo County, Louisiana.

[SEAL.]

F. A. LEONARD,
Clerk 1st Dist. Court, Louisiana.

Here insert statement that affiant is a citizen of the United States, or that he has filed his declaration of intention to become such, and that he is the head of a family, or is over twenty-one years of age, as the case may be. It should be stated whether applicant is native-born or not, and if not a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished. (See page 45, circular of January 1, 1889.)

80 4-138.

Duplicate.

Receiver's Receipt No. 6103.

Application No. 6103.

Homestead.

DEPARTMENT OF THE INTERIOR,
RECEIVER'S OFFICE, NATCHITOCHES, LA.,
February 25th, 1895.

Received of William Henry Wadkins, the sum of Fourteen Dollars, No cents; being the amount of fee and compensation of Register and Receiver for the entry of S. E. ¼ of Section 3, in Township 20 N. of Range 16 W. La. Mer., under Section No. 2290, Revised Statutes of the United States.

THOS. J. FLANNER, *Receiver.*

$14.00
160 acres at $1.25

NOTE.—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years he must file proof of his actual settlement and cultivation, failing to do which his entry will be canceled. If the settler does not wish to remain five years on his tract, he can, at any time after fourteen months, pay for it with cash or land warrants, upon making proof of settlement and of residence and cultivation from date of filing affidavit to the time of payment.
O-8.

(Endorsed on Reverse:) United States To Wm. Henry Wadkins—Recorded in Conveyance Book No. 15, page 167. Feb'y 27/95.

81 4-137.

Receiver's Receipt No. 6103.

Application No. 6103.

Homestead.

DEPARTMENT OF THE INTERIOR,
RECEIVER'S OFFICE, NATCHITOCHES, LA.,
February 25, 1895.

Received of William Henry Wadkins, the sum of Fourteen Dollars, no cents; being the amount of fee and compensation of Regis-

ter and Receiver for the entry of South East ¼ of Section 3 in Township 20 N. of Range 16 W. La. Mer., under Section No. 2290, Revised Statutes of the United States.

THOS. J. FLANNER, *Receiver.*

$14.00.

NOTE.—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years he must file proof of his actual settlement and cultivation, failing to do which his entry will be canceled. If the settler does not wish to remain five years on his tract, he can, at any time after fourteen months, pay for it with cash or land warrants, upon making proof of settlement and of residence and cultivation from date of filing affidavit to the time of payment.

O-8.

[On left margin:] See note in red ink, which Registers and Receivers will read and explain thoroughly to persons making application for lands where the affidavit is made before either of them.

[On right margin:] Timber land embraced in a homestead, or other entry not consummated, may be cleared in order to cultivate the land and improve the premises, but for no other purpose. If, after clearing the land for cultivation, there remains more timber than is required for improvement, there is no objection to the settler disposing of the same. But the question whether the land is being cleared of its timber for legitimate purposes is a question of fact which is liable to be raised at any time. If the timber is cut and removed for any other purpose it will subject the entry to cancellation, and the person who cut it will be liable to civil suit for the recovery of the value of said timber, and also to criminal prosecution under Section 2461 of the Revised Statutes.

82

4-348.

No. 1—Homestead.

LAND OFFICE AT NATCHITOCHES, LA.,
August 8", 1898.

I, William Henry Wadkins, of Caddo Parish, La., who on —— made Homestead Application No. 6103, for the S. E. ¼ Sec. 3, T. 20 N., R. 16 W. do hereby give notice of my intention to make *final*
(Insert "final" or "commuted")
proof to establish my claim to the land above described, and that I expect to prove my residence and cultivation before Clerk 1st Dist. Court Louisiana, at Shreveport, La., on September 19, 1898 by two of the following witnesses:

B. F. Teat of Mooringsport, La.
B. F. Iles ——.
W. M. Goodson of ——.
J. W. McCathron of ——.

——— ———,
(Signature of Claimant.)
WILLIAM HENRY WADKINS.

LAND OFFICE AT NATCHITOCHES, LA.,
August 10, 1898. 190–.

Notice of the above application will be published in the Shreveport Times printed at Shreveport, which I hereby designate as the newspaper published nearest the land described in said application.
EDWD. PHILLIPS, *Register.*

NOTICE TO CLAIMANT.—Give time and place of proving up and name the title of the officer before whom proof is to be made; also, give names and post office address of four neighbors, two of whom must appear as your witnesses.

(Endorsed:) H. E. No. 6103—Application for notice of publication—William Henry Wadkins.—Shreveport Times, Shreveport, La.

83 *Notice for Publication.*

Land Office at Natchitoches, La., August 10, 1898.—Notice is hereby given that the following named settler has filed notice of his intention to make final proof in support of his claim, and that the said proof will be made before Clerk District Court at Shreveport, La., on September 19, 1898, viz: Homestead entry No. 6103, William Henry Wadkins, for the Southeast quarter, section 3, Township 20, North, range, 16 West, Louisiana Meridian. He names the following witnesses to prove his continuous residence upon the cultivation of said land, viz: B. F. Teat, B. F. Iles, W. M. Goodson, J. W. McCathron, of Mooringsport, La.
EDWD. PHILLIPS, *Register.*

84 STATE OF LOUISIANA,
Parish of Caddo:

Before me, the undersigned authority, personally appeared S. B. Johnson who, upon being duly sworn, deposes and says that he is the publisher of the Shreveport Times, a newspaper published daily and weekly in said parish, and that the notice of the intention of William Henry Wadkins to make final proof in Homestead Entry No. 6103 for S. E. ¼ Sec. 3, T. 20 N., R. 16 W., was published once in the daily and five consecutive issues of the weekly edition of said newspaper in the body of the paper, and not in a supplement thereto, the first insertion being on the 13″ day of August, 1898, and the last on the 18″ day of September, 1898.

S. B. JOHNSON.

Sworn to and subscribed before me on this 19th day of September, 1898.

[SEAL.] F. A. LEONARD,
Clerk First District Court of Louisiana.

(Endorsed on Reverse:) Publisher's affidavit.

85 (4–227.)

Certificate as to Posting of Notice.

LAND OFFICE AT NATCHITOCHES, LA.,
September 21, 1898.

I, Edward Phillips, Register, do hereby certify that a notice, a printed copy of which is hereto atached, was by me posted in a conspicuous place in my office for a period of thirty days, I having first posted said notice on the 10th day of August, 1898.

EDWD. PHILLIPS, *Register.*

(Endorsed on Reverse:) Certificate as to posting of Notice.

86 *Notice for Publication.*

LAND OFFICE AT NATCHITOCHES, LA.,
August 10, 1898.

Notice is hereby given that the following named settler has filed notice of his intention to make final proof in support of his claim, and that the said proof will be made before Clerk District Court at Shreveport, La., on September 19, 1898, viz: Homestead entry No. 6103, William Henry Wadkins, for the southeast quarter, Section 3, Township 20 north, range 16 west, Louisiana Meridian. He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz: B. F. Teat, B. F. Iles, W. M. Goodson, J. W. McCathron, of Mooringsport, La.

EDWD. PHILLIPS, *Register.*

87 4–369.

Homestead Proof—Testimony of Witness.

B. F. TEAT, being called as witness in support of the homestead entry of William Henry Wadkins for S. E. ¼ Sec. 3 T. 20 N. R. 16 W., testifies as follows:

Ques. 1. What is your name, age, and post-office address?
Ans. Benjamin F. Teat, 50 years, Mooringsport, La.
Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?
Ans. Yes, Yes.
Ques. 3. Is said tract within the limits of an incorporated town or

selected site of a city or town, or used in any way for trade or business?

Ans. No, No.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Ordinary hill farm land. Pine and oak timber.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. House finished Aug. 1/93 and he and his family moved into same on that date.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Yes. He is a widower.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. Has never been absent since making settlement.

Ques. 8. How much of the homestead has the settled cultivated, and for how many seasons did he raise crops thereon?

Ans. 1st season 20 acres, second 30, since 40 acres. 5 seasons.

Ques. 9. What improvements are on the land, and what is their value?

Ans. 1 Loghouse. 2 Rooms 16 x 8—1 16 x 16 40 acres cleared. Value $150.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None. More valuable for agricultural than mineral purposes.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not. I think the settler has acted in entire good faith.

(Sign plainly with full Christian name.)

BENJAMIN F. TEAT.

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 19" day of September, 1898, at my office at Shreveport, in Caddo Parish, Louisiana.

[SEAL.] F. A. LEONARD,
Clerk 1st District Court, Louisiana.

See Note on fourth page.

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answer must be full and complete to each and every question asked,

and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

88 4–369.

Homestead Proof—Testimony of Witness.

B. F. ILES, being called as witness in support of the homestead entry of William Henry Wadkins, for S. E. ¼ Sec. 3, T. 20 N., R. 16 W., testifies as follows:

Ques. 1. What is your name, age, and post-office address?

Ans. Benjamin F. Iles. 33 Years. Mooringsport, La.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Yes, Yes.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city, or town, or used in any way for trade or business?

Ans. No. No.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. Ordinary hill farm land. Pine and oak timber.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. His house was finished Aug. 1" 1893 and he and his family moved into same on that date.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Yes. He is a widower.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. Has never been absent since making settlement.

Ques. 8. How much of the homestead has the settler cultivated, and for how many years did he raise crops thereon?

Ans. 1st season 20 acres. 2d 30 and since 40 acres. 5 seasons.

Ques. 9. What improvements are on the land, and what is their value?

Ans. 1 Log house. 1 Room 16 x 16, 2 16 x 8. 40 acres cleared. Value $150.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None. More valuable for agricultural than mineral purposes.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?
Ans. I am not. I think the settler has acted in entire good faith.
(Sign plainly with full Christian name.

his
BENJAMIN F. x ILES.
mark

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 19" day of September, 1898, at my office, at Shreveport, in Caddo Parish, Louisiana.

F. A. LEONARD,
Clerk 1st Dist. Court, Louisiana.

(See Note on fourth page.)

(The testimony of witnesses must be taken at the same time and place and before the same officer, as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

89 4–369.

Homestead Proof—Testimony of Claimant.

WILLIAM HENRY WADKINS, being called as a witness in his own behalf in support of homestead entry No. 6103, for S. E. ¼ Sec. 3 T. 20 N., R. 16 W., testifies as follows:

Ques. 1. What is your name, age, and post-office address?
Ans. William Henry Wadkins. 37 Years. Mooringsport, La.
Ques. 2. Are you a native-born citizen of the United States, and if so, in what State or Territory were you born?
Ans. Yes. Texas.
Ques. 3. Are you the identical person who made homestead entry No. 6103, at the Natchitoches, La. land office on the 25" day of February, 1895, and what is the true description of the land now claimed by you?
Ans. Yes. S. E. ¼ Sec. 3 T. 20 N., R. 16 W.
Ques. 4. When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)
Ans. House finished Aug. 1/93 & I and my family moved into same on that date. 1 Log house 1 Room 16 x 16—2 16 x 8. 40 acres cleared. Value $150.00.
Ques. 5. Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)
Ans. Myself and 2 children. Yes. Am a widower.
Ques. 6. For what period or periods have you been absent from

the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. Have never been absent since making settlement.

Ques. 7. How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

Ans. 1st year 20 acres. 2d 30 & since 40 acres. 5 seasons.

Ques. 8. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade and Business?

Ans. No. No.

Ques. 9. What is the character of the land? Is it timber, mountainous, prairie, grazing, or ordinary agricultural land? State its kind and quality, and for what purpose it is most valuable.

Ans. Ordinary hill farm land. Most valuable for farming.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. None. More valuable for agricultural than mineral purposes.

Ques. 11. Have you ever made any other homestead entry? (If so, describe the same.)

Ans. No.

Ques. 12. Have you sold, conveyed, or mortgaged any portion of the land; and if so, to whom and for what purposes?

Ans. No. No.

Ques. 13. Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same, and state where the same is kept.)

Ans. No.

Ques. 14. Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral), made by you since August 30, 1890.

Ans. Have made no other entry.

(Sign planely with full Christian name.)

WILLIAM HENRY WADKINS.

*In case the party is of foreign birth, a certified transcript from the court records of his declaration of intention to become a citizen, or of his naturalization, or a copy thereof, certified by the officer taking this proof, must be filed with the case. Evidence of naturalization is only required in final (five-year) homestead cases.

90 I hereby certify that the foregoing testimony was read to the claimant before being subscribed, and was sworn to before me this 19" day of September, 1898, at my office at Shreveport, in Caddo Parish, Louisiana.

F. A. LEONARD,
Clerk 1st Dist. Court, Louisiana.

(See note below.)

NOTE.—The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes and state to him that it is the purpose of the Government, if it be ascertained that he testified falsely, to prosecute him to the full extent of the law.

Title LXX.—Crimes.—Ch. 4.

SEC. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, therefter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See § 1750.)

[Endorsed:] 4–369. Homestead Proof. Land Office at Natchitoches, La. Original Application No. 6103. Final Certificate No. 7038. Approved: Edwd. Phillips, Register. J. S. Dixon, Receiver. Commissions, $4.00. Testimony, .98—$4.98.

Final Affidavit Required of Homestead Claimants.

Section — of the Revised Statutes of the United States.

I, William Henry Wadkins, having made a homestead entry of the S. E. ¼ Section No. 3 in Township No. 20 N. of Range No. 16 W., subject to entry at Natchitoches, La., under Section No. 2289 of the Revised Statutes, do now apply to perfect my claim thereto, by virtue of section No. — of the Revised Statutes of the United States; and for that purpose do solemnly swear that I am a native born, a citizen of the United States; that I have made actual settlement upon and have cultivated and resided upon said land since the 1st day of August, 1893, to the present time; that no part of said land has been alienated, except as provided in section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler; that I will bear true allegiance to the Government of the United States, and, further, that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States.

(Sign plainly with full Christian name.)

WILLIAM HENRY WADKINS.

I, F. A. Leonard, Clerk 1st Dist. Court of Louisiana, do hereby certify that the above affidavit was subscribed and sworn to before

me this 19th day of September, 1898, at my office at Shreveport, in Caddo Parish, Louisiana.

[SEAL.]

F. A. LEONARD,
Clerk 1st Dist. Court of Louisiana.

91

4–140.

Final Receiver's Receipt No. 3078.

Application No. 6103.

Homestead.

RECEIVER'S OFFICE, NATCHITOCHES, LA.,
Sept. 21, 1898.

Received of William Henry Wadkins the sum of Four Dollars no cents, being the balance of payment required by law for the entry of South East Quarter of Section 3 in Township 20 N. of Range 16 W. La. Mer. containing One Hundred and Sixty acres, under tion 2291 of the Revised Statutes of the United States.

J. S. DIXON, *Receiver.*

$4.00.

$.98 Testimony fee received. Number of written words, 650. Rate per 100 words 15 cents.

92

(4–196.)

Homestead.

Final Certificate No. 3078.

Application No. 6103.

LAND OFFICE AT NATCHITOCHES, LA.,
Sept. 21, 1898.

It is hereby certified That, pursuant to the provisions of Section No. 2291, Revised Statutes of the United States, William Henry Wadkins, has made payment in full for South East ¼ of Section No. 3, in Township No. 20 N., of Range No. 16 W., of the Louisiana Principal Meridian, containing 160.00 acres.

Now, therefore, be it known, That on presentation of this Certificate to the Commissioner of the General Land Office, the said William Henry Wadkins shall be entitled to a Patent for the Tract of Land above described.

EDWD. PHILLIPS, *Register.*

(Endorsed on Reverse:) Final Certificate No. 3078—Homestead Application No. 6103.—Land Office at Natchitoches, La., Sept. 21, 1898, Sect. 3, Town 20 N., Range 16 W.—Approved Nov. 1,

1898.—E. B. Wilson, Clerk.—Division C—Patented Dec. 12, 1898, Recorded, Vol. 142, page 118.

Endorsement appearing on next page: Filed in evidence in 14135 M'ch 16/1911. (Signed) F. A. Leonard, Cl'k.

93 *Proceedings Had in the Supreme Court of the State of Louisiana.*

(Transcript Filed.)

No. 18851.

W. H. WADKINS, Tutor,
vs.
PRODUCERS OIL Co. et al.

Appeal from the First Judicial District Court, Parish of Caddo.

Filed April 29th, 1911.
(Signed) PAUL E. MORTIMER, *Clerk.*

Called and Appearance, Argued and Continued.

Extract from Minutes.

NEW ORLEANS, TUESDAY, *December 12th*, 1911.

The court was duly opened, pursuant to adjournment.

Present their Honors: Joseph A. Breaux, Chief Justice. And Frank A. Monroe, Olivier O. Provosty, and Alfred D. Land, Associate Justices. Absent: Walter B. Sommerville, Associate Justice.

No. 18851.

W. H. WADKINS, Tutor,
vs.
PRODUCERS OIL Co. et al.

This cause *cause* came on this day to be heard and was argued by counsel: Mr. S. L. Herold opened for the plaintiff, appellee; Mr. A. L. Beaty, of the Texas Bar, and who was introduced to the court by Mr. F. J. Looney, replied for the Producers Oil Co., defendant, appellant. And the hour of adjournment having arrived, the court ordered the cause to be continued until to-morrow, Wednesday, December 13th, 1911.

94 *Called and Appearance, Argued and Submitted.*

Extract from Minutes.

NEW ORLEANS, WEDNESDAY, *December 13th*, 1911.

The court was duly opened, pursuant to adjournment.

Present their Honors: Joseph A. Breaux, Chief Justice. And Frank A. Monroe, Oliver O. Provisty, and Alfred L. Land, Associate Justices. Absent: Walter B. Sommerville, Associate Justice.

No. 18851.

W. H. WADKINS, Tutor,
VS.
PRODUCERS OIL Co. et al.

This cause, continued from yesterday, came on this day further to be heard: Mr. E. B. Herndon opened for the Atlanta & Shreveport Oil and Gas Company, defendant and appellant; and Mr. Herold, for the plaintiff appellee closed the argument. The court then took the cause under advisement upon the briefs and papers on file.

Final Judgment.

Extract from Minutes.

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

NEW ORLEANS, TUESDAY, *January 2nd*, 1912.

The court was duly opened, pursuant to adjournment.

Present their Honors: Joseph A. Breaux, Chief Justice. And Frank A. Monroe and Alfred D. Land, Associate Justices. Absent: Olivier O. Provosty and Walter B. Sommerville, Associate Justices.

95 His Honor Mr. Chief Justice Breaux, pronounced the opinion and udgment of thej Court in the following case.

No. 18851.

W. H. WADKINS, Tutor,
VS.
PRODUCERS OIL Co. et al.

For the reasons stated, it is ordered, adjudged and decreed that the judgment appealed from is avoided, annulled and reversed; that plaintiff's demand be rejected; his petition dismissed in both courts, at his costs.

96 *Opinion of the Court.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

NEW ORLEANS, TUESDAY, *January 2d*, 1912.

The Court was duly opened, pursuant to adjournment.

Present—Their Honors:

Joseph A. Breaux, Chief Justice;
Frank A. Monroe,
(Absent:) Olivier O. Provosty,
Alfred D. Land,
(Absent:) Walter B. Sommerville,
Associate Justices.

His Honor Mr. Chief Justice Breaux, Pronounced the opinion and judgment of the Court in the following Case:

97 TUESDAY, *January 2nd*, 1912.

No. 18851.

W. H. WADKINS
VS.
PRODUCERS OIL CO. et al.

Appeal from the First Judicial District Court, Parish of Caddo.
Mr. Chief Justice BREAUX:

This was a petitory action.

The tutor of Effie Bell Wadkins claimed an undivided half interest in the S. E. Quarter of Township 20 N. R. 16 W.

On the twenty-fifth day of February, 1895, W. H. Wadkins, father of Effie, filed his application for the entry of the land described under the homestead law.

The entry was allowed and the necessary papers issued to him.

At the end of five years, to-wit: on Sept. 8, 1889, he made final proof and obtained a patent.

W. H. Wadkins married Mary Jane McCatheron on June 24, 1894, and she died on the fifth day of December, 1896.

There were two children born of this first marriage. One died at the age of about two years, and the other is the plaintiff, represented by her tutor.

The two defendants are oil and gas companies operating in the Caddo oil and gas fields.

The Producer's Oil Company, under a lease from the Atlanta-

Shreveport Oil and Gas Company, drilled a well on the property, which produced a large amount and which is still producing.

Judgment was rendered in favor of plaintiff for a half interest in the land and for $86,328.24 realized from the oil produced.

Wadkins personally had parted with the title to the land
98 and had sold all minerals, including oil, on the land sued for.

Plaintiff personally having settled on the land and obtained receipts of entry, before mentioned, sued as tutor of Effie to recover one-half of the land and the amount in cash before mentioned as having been realized from the oil.

From the foregoing, it will be seen that plaintiff's wife died about two years after plaintiff's entry on the land, as above stated. Plaintiff, tutor, claims that the late Mrs. Wadkins acquired an interest from the date of his entry upon the land.

As the plaintiff had only a right of possession and cultivation, he can scarcely maintain the proposition that his title dates from the time that he obtained the certificate allowing him to go into possession.

The three propositions for discussion are:

First. The date from which the entryman under the homestead law of the United States acquires title.

Second. The title by relation back to the entry of the settler on the land.

Third. The interest vel non acquired by the heir of the wife.

Before we enter upon the subject, we will take a passing view of the laws of the Federal Government under which homestead entries are made and of the State laws relating to the community between husband and wife.

From the earliest days in its history, the Government has retained the right to dispose of public domain. The authority in this respect is not limited.

In the treaty of cession of the territory of Louisiana, it is mentioned that the public lands became part of the domain of the Federal Government, and the local authorities in those days embodied expressions of approval in this regard in the fundamental law of the State.

Ordinances annexed to the Constitution of 1812:—

99 Since those days, the law making power of the General Government has always legislated from that point of view, and well considered decisions have always recognized the right which remains in the Government until the land is finally disposed of.

In fine, the public domain passes from the Government to the grantee under the laws of the United States. Prior to the transfer of the title by the Government to the homesteader, the Government imposes its own conditions as the land continues to be the property of the United States until the patent issues.

Shiver vs. United States, 159 U. S., 493.

This leaves no ground for the application of the doctrine of relation back to another act.

The title does not vest complete entry and payment.

Hall vs. Russell, 101 U. S., 503.

Menard vs. Hill, 125 U. S., 190.

The statute does not concern itself about the wife while the husband is living as a necessary party in perfecting the homestead. She any further than any other member of the family is not a necessary party. That is, she stands on the same footing during the life of her husband as any other member of the family and has no other right whether the family consists of children or grandchildren, or any other person. In case of the husband's death, she, as his widow, by express provision of the statute succeeds to the privileges of the entry and of obtaining the final receiver's receipt and finally a patent.

At her death, the heirs of the husband succeed to the privilege.

During the five years of possession and cultivation the entryman has the right to perform such acts and of taking such steps as are necessary to the improvement of the property. He can protect it from waste and trespass as if it were his own, but it does not follow that on that account the land is transferred before the expiration of the time before mentioned or before compliance with the provisions of the law.

In order to emphasize its right, as it were, the Government provides that if the settler abandons the property over six months he loses all right under the homestead law. Had he acquired any interest, the six months would not be as fatal to his entry under the homestead law as it is.

He possesses the right of possession to the exclusion of all others, but this does not constitute title to the land. He is the "remainder man." Shaver vs. United States, (15 U. S., 499). That is, his interest vests when earned.

The Court, in the just cited decision, informs us that the Courts of original jurisdiction uniformly hold in regard to the date that the entry man acquires title, applies to all homestead entries and cites a number of decisions in support of this view, and the Court adds the general concensus of opinion is entitled to great weight as authority.

The uniform jurisprudence of this State is in accord with these decisions.

In the 5th Ann., 75, in strong, clear and positive terms, the Court held that until the patent issues the fee is in the General Government. The judgment in this case was affirmed by the Supreme Court of the United States, 15 Howard, 433, Foley vs. Harrisson.

There are three decisions of this Court of recent date, to which learned counsel confidently refers and quotes from. As he contends that they are pertinent and controlling we will consider them specially later. We are impressed by his argument because he urges that they settle the rule of property and agree with him that such a rule should not be changed save in case of the utmost necessity.

We will determine later if it be as counsel urges.

101 Having arrived at the conclusion in regard to the date of the title, in discussing our first proposition, it behooves us to take up the second proposition and determine whether the title acquired relates back to the entry upon the land, and determine whether the fiction applies which considers the thing done of a recent date as if done at an anterior date.

That doctrine scarcely has application in a homestead case in favor of the heirs of the mother deceased, who died before the end of the five years necessary to complete the homestead entry. At her death, Mrs. Wadkins, the mother, had acquired no right in the land, therefore, her heir, or the one who represents her, cannot invoke a prior right in support of a subsequent alleged but non-existing right.

If this were the case, in the event that the homesteader remarries, and if the first wife acquires some interest in the land, it would follow that the second wife would also be entitled to some interest. There would be necessity for a division; for a partition of interest, as to which the law makes no provision.

According to plaintiff, there would be even two communities: One dissolved and the other existing, but no such condition can arise under the homestead law.

It is different in case of the entryman or the entrywoman. Her right may relate back to the settlement for as to those there is express provision made under the statute.

It is not possible; the title cannot relate back so as to confer right on the wife although the husband's title relates back, or the widow as before stated.

The decision in the McCune vs. Essig case, 199 U. S., 387, is very similar to the case before us for decision, both as relates to title by relation and as relates to the right of the community.

In the cited case, it was contended that the interest which the husband acquired by his entry was community property and that it related back to the date of entry.

102 It is proper to state here that at the death of the husband in the cited case, the wife fulfilled the conditions of settlement and proof. The Court held in that case that the title remained in the Government; that no beneficial interest had passed to the husband under the doctrine of relation, and that the wife who had obtained the patent was the beneficiary of the grant.

The doctrine of relation was considered also in the case of Hussman vs. Durham, 165 U. S., 149.

The definition of this doctrine by the Court does not warrant the conclusion that one other than the homesteader can benefit by the doctrine.

If it were held that the right related back to the entry as relates to others than the entryman, it would give rise to the thought that the statute intended nothing; that it was a mere dead letter when it specifically states that the entryman should declare on his oath, forming part of his application, that the land that he seeks to enter is entered for himself and not for the benefit of others. That he is

not to give to others the benefit of the land entered or make any agreement by which the title should enure in whole or in part to the benefit of any other person except himself. See the Federal Homestead Statute.

The Government has made provision regarding the wife. The statute provides—"If the person making such entry or if he be dead, his widow, or, in case of her death, his devise-s," all from the same statute, all precluding the possibility of arriving at the conclusion that the wife, despite these provisions, has an interest in the land entered by her husband to which her heirs can lay claim after her death.

His heirs or devise-s are the last mentioned. What other can this mean if *it* not his heirs or devise-s?

This, in our opinion, settles the question of title by relation back to the settler's first entry on the land as a homesteader.

103 The next proposition has been somewhat anticipated unavoidably. That is, as to whether the heirs of the widow has acquired anything in the land.

While there may be something said in support of the proposition that as between the Government and the settler these are correct positions that as between the settler and his wife, and afterward his widow in case of his death, the land may be considered hers to the extent that the community is concerned.

If the statute was not *as* positive it may be that such a conclusion might be reached. It does seem as if nearly all the rights merge in the husband when he is the entryman, and the only exception is in case of his death and the right given to the widow to perfect the homestead. In the event of her death we have seen that it is not her heirs but his heirs who are the possible beneficiaries. The statute is imperative.

Until the term of occupancy has elapsed and a patent has issued the statute is controlling. It is different after it has passed out of the Government and a right has been acquired to the land. As to acquiring an interest before then, it is a well known fact that the community system is ignored in the administration of the Federal laws.

Cunningham vs. Krutz, 7 L. R. A., p. 968.

The heirs take as donees and not by descent.

The terms of the statute are clearly expressed.

The attempt to add another condition by decreeing that an interest enured to the community or to the wife or to her heirs would be wanting in precision intended by its terms.

We have already stated that there are three decisions to which we said we would return later, to which counsel confidently refers. The first is the 52 A., 58, case Brown vs. Fry.

It is stated in a note to Cunningham vs. Krutz case, cited above, with reference to this Court, that it distinctly based its de-

104 cision in the 52 A., 58 case upon the fact that all the rights of the homesteader and his wife are complete. They had passed the period of uncertainty in matter of land entry. There was

no more any question possible in regard to the homesteader's right; it was final and had passed out of the Government. If that be the correct statement of the case, (and we certainty think it is) it affords no good ground to plaintiff to invoke the decision in support of his claim.

In Richard vs. Moore, 110 La., 435, the Court held that the homesteader had not been in possession of the property five years at the date of the husband's death; that his widow remained in possession the five years and completed the title and obtained a patent; that the property became hers by the patent and did not fall into the community, which was dissolved at the date of her husband's death. That the community could not acquire the title under the statute. When the title was acquired the community had been dissolved.

In regard to the other cited decision—the following is from the note on the same, which we slightly abbreviate:—

The case of Crochet vs. McCamant, 116 La., it appears in direct opposition to the doctrine announced in Cunningham vs. Kruntz case, 7 L. R. A. (N. S.) p. 767, for the Court holds that the acquisition dates dates from the entry; that the final proof has a retroactive effect to the date of the entry, and, consequently, the homestead became the joint property of the husband and the wife at the time of the entry, even though proof was made after the death of the wife. That, in that case, the death of the wife occurred after the expiration of the five years, and that this fact may distinguish this case from Cunningham vs. Kruntz. But, it is stated further in the note in the opinion cited above—little weight appears to be attached to this fact, the decision being mainly upon the fact that immediately upon the entry the homesteader had a conditional ownership of the land and the accomplishment of the condition under which he
105 held retroacted to the entry and consequently the land.

This dicta- in the quoted opinion is erroneous. It was not necessary to the decree and for that reason is not considered as controlling.

But with this dista- deducted, the decree is correct and in accord with the views before expressed. To resume, plaintiff acquired under the homestead law the right to go into possession and protect his possession; that is all.

The mere fact that one takes out the first papers with the view of entering the property under the homestead law is not equivalent to a title.

Guaranty Savings Bank vs. Bladen, 176 U. S., 456.

A final, and not a duplicate, receiver's receipt evidences title.
Hall and Leg vs. Jeter, 127 La., 234.

The title remains in the United States until the homesteader acquires a right to a final receiver's receipt.
Spokane Falls vs. Zeigler, 167 U. S., 73.

The modus operandi to which the Civil Code applies are acquisitions by purchases and by donation. made jointly to both spouses.

118 La., 68. Then the property passes to the community. A condition which does not arise in the case under consideration.

For reasons stated, it is ordered, adjudged and decreed that the judgment appealed from is avoided, annulled and reversed; that plaintiff's demand be rejected; his petition dismissed in both Courts, at his costs.

Syllabus.

1. In determining whether land acquired under the homestead laws of the United States falls into a community already dissolved by the death of the wife, which occurred between the date that the entry was made and the date that the patent was issued, the laws of the United States, which gives the land under certain stated conditions, must be applied and not the laws of this State re-
106 lating to community property.

2. Between the day that the homesteader makes the entry and that on which the Government issues the patent, the title to the land is still in the United States, in spite of the fact that the entryman has right of possession and cultivation. If the wife dies before the patent has been issued and before the title has vested in the entryman it certainly has never been in the community of which she was a partner.

3. The wife of an entryman during his life has no rights in the land and if she dies, and he subsequently completes his title, this title does not refer back to the community which formerly existed. As the wife had no interest in the land during her lifetime she could not acquire any after her death, and the doctrine of relations would have no application to the case.

4. The power of Congress to control the land and its disposition until the homesteader has acquired an absolute title is undoubted, and, in its wisdom, it has seen fit to merge in the husband all the rights arising from the entry, and ignoring the community system of this State has given the wife no rights in the land which has been entered, as long as the husband is alive.

[Endorsed:] No. 18851. Wadkins v. Oil Co.

107 *Petition for Rehearing.*

In the Supreme Court of Louisiana.

No. 18851.

W. H. WADKINS, Tutor,

VS.

PRODUCERS OIL COMPANY et al.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the State of Louisiana:

The petition of W. H. Wadkins, Natural Tutor of the minor, Effie Belle Wadkins, with respect represents that the opinion and

decree herein handed down by Your Honorable Court is contrary to the law and to the evidence; and respectfully avers that the court erred in deciding the case in favor of the defendants, and in deciding against your petitioner the right and title set up by him for the benefit of his ward, under the homestead laws of the United States, in this, to-wit:

First.

In holding against your petitioner's claim of title, under said homestead laws, under his contention that patent, when issued to the homestead entryman under his entry, vests according to the law of the state in which the land is situated; to-wit, in this case, the laws pertaining to the community of acquets and gains.

Second.

In deciding adversely to your petitioner his claim, that the homestead entry made by the head of the community is, under said homestead laws, made for the benefit of the community; and particularly, in holding that the terms of the homestead statutes, themselves,
prevent any interest of the community from attaching to the
108 homestead entry, and its subsequent ripening into a perfect title.

Third.

In deciding against the right set up by petitioner, that is, in holding that, under the homestead statutes, the entryman by virtue of his entry acquires no right, except a right of possession and of cultivation, until the making of his final proofs; and, thereby, deciding against petitioner's claim that the homestead entry was, under the laws of the state, the beginning of his title; or, to use the language of the civilians, "the cause or the title" of its acquisition.

Your petitioner respectfully avers that the errors of the court, as above stated, were each and all caused by erroneous construction of the laws of the United States pertaining to homestead entries; and that, thereby, this court has decided adversely to her, the right and title claimed under the federal laws aforesaid.

Wherfore, and for the reasons assigned in our original briefs, petitioner prays that a rehearng be granted, and for general relief.

(Signed) THIGPEN & HEROLD,
Attorneys for Petitioner.

(Endorsed:) No. 18,851. Supreme Court of Louisiana. W. H. Wadkins vs. Producers Oil Co. et al. Petition for Rehearing. Filed Jan'y 16, 1912. (Signed) John A. Klotz, Dep. Clerk.

109 *Rehearing Refused (Extract from Minutes).*

NEW ORLEANS, MONDAY, *March 11th*, 1912.

The Court was duly opened pursuant to adjournment.

Present: Their Honors: Joseph A. Breaux, Chief Justice. And Frank A. Monroe, Olivier O. Provosty, Alfred D. Land and Walter B. Sommerville, Associate Justices.

No. 18851.

W. H. WADKINS

VS.

PRODUCERS OIL COMPANY et al.

For the reasons assigned in the opinion this day handed down, the application for rehearing in this case is Refused. (His Honor, the Chief Justice, adheres to the first opinion and agrees with the court's action in refusing the rehearing, and hands down his reasons therefor.)

110 *Opinion Rendered on Application for Rehearing.*

UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

NEW ORLEANS, *Monday, March 11th*, 1912.

The Court was duly opened, pursuant to adjournment.

Present, Their Honors: Joseph A. Breaux, Chief Justice; Frank A. Monroe, Olivier O. Provosty, Alfred D. Land; Absent, Walter B. Sommerville, Associate Justices.

His Honor Mr. Justice Provosty pronounced the opinion and judgment of the Court in the following Case:

111 *Opinion.*

Mr. Justice Provosty.

No. 18851.

W. H. WADKINS, Tutor,

VS.

PRODUCERS OIL COMPANY et als.

On Application for Rehearing.

MONDAY, *March 11th*, 1912.

The question being, whether the land in dispute fell within the community of acque-ts and gains between Wadkins and his now

deceased wife as heir of whom the plaintiff minor claims ownership of one half of the property, the facts are, that Wadkins settled upon the land with a view to acquiring it under the homestead laws of the United States in 1893, one year before his said marriage which took place in 1894; that this application for entry was filed in 1895, during the existence of his marriage; that his wife died in 1896; that he made his final proofs and obtained his patent in 1898, and thereafter sold the land to the authors in title of the defendant company.

The court has not held, as counsel erroneously suppose, that property acquired under the United States homestead law during the community of acquests and gains does not fall into the community. The contrary was expressly decided in the cases (among others) of Brown vs. Fry, 52 Ann. 58, and Simon vs. Perrodin, 35 Ann. 931; and the point has been considered by both bench and bar as being so fully settled that in the recent closely contested cases of Richard vs. Moore, 110 La. 435, and Crochet vs. McCamant, 116 La. 1, no one thought of contesting it, but considered that the sole debatable question was as to the point of time when the title should be considered as having vested. Indeed, in the latter case the decision was that the property had fallen into the community; and in the former case the court expressly stated that if the patent had issued during the husband's life the property would of neces-
112 sity have fallen into the community. And we do not find the legal situation in such a case is anywhere better expressed than in the following passage in plaintiff's learned counsel's brief:

"The homestead laws of the United States are to be construed with, and not in opposition to, the community laws of the State. In case of any conflict between the two, then, of course, the federal law must prevail. But in the absence of anything in the federal statutes to deny the application of the state laws, then the state laws must be considered as written into the federal statutes, and as a part of them. To deny this proposition, would be to assert an intention on the part of Congress to legislate upon local matters of land title, and to abolish the system of community property as to all lands acquired under the provisions of the homestead statutes."

But what the court has held is that the investiture of the title dates from the settlement upon the land, and not as contended by plaintiff, from the filing of the application for entry. And this, as an effect of the act of Congress of 1880, (Chapt. 89, 21 Stat. at L. 141; U. S. Comp, Stat. 1901, p. 1393), and of our codal provisions touching the retroactive operation of the accomplishment of suspensive conditions. This retroactivity of the accomplishment of the suspensive condition is expounded in the case of Crochet vs. McCamant, supra; and is relied upon by plaintiff in the present case.

In the McCamant case, by the way, the attention of this court was not called to the said act of Congress of 1880; and, besides, the operation of said act would not have made any difference in the case, as the settlement and the filing of the application for entry had both taken place during the marriage.

Said act of 1880, referring to the homesteader, says:

"His right shall relate back to the date of settlement, the same as if he settled under the pre-emption laws.

Plaintiff's learned counsel lays much stress upon the
113 qualification "the same as if he settled under the pre-emption laws," insisting that by said act of 1880 the nature of the right acquired by the homesteader by mere settlement was not changed but continued the same as theretofore, and that as theretofore he did not become vested with any interest in the land until the filing of his application for entry; and we must admit that we are much impressed by the argument of the learned counsel on that point; but the Supreme Court of the United States has expressed the contrary opinion on two different occasions. True, only arguendo, but our great respect for that high tribunal leads us to accept those expressions as conclusive, bearing as they do upon the interpretation of a federal statute.

In Maddox vs. Durnham, 156 U. S. 546; 39 L. Ed. 527; between the date of settlement upon the land by the homesteader and the date of his offering to file his application for entry the lands was withdrawn from entry. They were sub-quently granted to the State of Kansas and by that state were granted to the M. K. & T. R. R. Co. and by that company sold to the plaintiff who was suing to recover them from the homesteader. The Court said:

"The claim of the defendant cannot be sustained. At the time of those transactions the mere occupation of the land with a purpose at some subsequent time of entering it for a homestead gave to the party so entering it no rights. The law in force (12 Stat. at L. 392) made the entry at the law office the initial fact. So the law stood until May 14, 1880 (21 Stat. at L. 141) when an act was passed, the section of which is as follows: * * * By this section for the first time the right of a party entering land under the homestead law was made to relate back to the time of his settlement."

By inference the court here holds, that if the defendant's settlement had been made subsequently to instead of prior to, the adoption of the said act of 1880, the withdrawal of the land from entry would have been ineffective as against the rights acquired
114 by the homesteader by his settlement.

The case of Railway vs. Donahue, 210 U. S. 23; 52 L. Ed. 941, in its facts is even less closely analogous than that of Maddox vs. Burnham, but the expressions of the court, the present Chief Justice being the organ of the court, are even stronger. Thus, at page 30, the court said:

"It was not until May 14, 1880 (c. 89, 21 Stat. 141), that a homestead entry was permitted to be made upon unsurveyed public land. The statute which operated this important change moreover modified the homestead law in an important particular. Thus, for the first time, both as to the surveyed and unsurveyed lands, the right of the homestead settler was allowed to be initiated by and

to arise from the action of settlement, and not from the record of the claim made in the land office."

Again:

"It is certain, however, that, viewing comprehensively the rulings of the Land Department, the subject has been considered in two aspects—first, the sufficiency of acts done by a settler upon or after initiating a claim to give notice to the extent of his claim to another settler; and, second, the sufficiency of like acts to entitle to a patent for the land as against the Government. In both classes it is undoubted that the administrative rule has been, as to surveyed and unsurveyed lands, that the notice effected solely by improvements upon the land *in* confined to land within the particular quarter-section upon which the improvements are situated. 5 L. D. 141. And this ruling was predicated upon the assumed import of the decision in Quinby vs. Conlon, 104 U. S. 420."

"As to the second aspect, that is, the nature and character of the acts of the settler essential to initiate and preserve a claim to land as against the Government, the rulings of the Land Department have been liberal towards the settler, and his good
115 faith and honest purpose to comply with the demands of the statute have primarily been considered, thus carrying out the injunction of this court in Tarpey vs. Madsen, 178 U. S. 220, and cases there cited, to the effect that regard should be had in passing on the rights of the settlers to the fact that "the law deals tenderly with one who, in good faith, goes upon the public lands with the view of making a home thereon."

Rehearing Refused.

Mr. Chief Justice Breaux.

Adhereing to the first opinion, hands down the following:

All the decrees of this Court on the subject matter involved are in harmony. The Texts of one of the decisions (possibly two) are broader than necessary. See Crochet vs. McCamant, 116 La., p. 1. See also, upon the subject, 7 N. S. (L. R. A.), pp. 367, 968. (Note.)

We held in our decision heretofore handed down that between the government and the homesteader community rights cannot interfere with the general government. As relates to the government—it falls into the community after it has been acquired, not before.

I adhere to the first opinion and agree with the Court's action in refusing the rehearing.

116 *Petition for Writ of Error.*

In the Supreme Court of Louisiana.

No. 18851.

W. H. WADKINS, Tutor,

vs.

PRODUCERS OIL COMPANY et al.

The petition of the plaintiff herein, William Henry Wadkins, Natural Tutor of the minor, Effie Bell Wadkins, with respect represents:

That the final decision of the Supreme Court of Louisiana, in rendering judgment against him in the above styled cause, is erroneous.

That he considers himself aggrieved by the said final decision of the Honorable Supreme Court and hereby prays for a writ of error from the said decision and judgment to the Honorable Supreme Court of the United States; and for an order fixing the amount of the supersedeas bond.

And the said W. H. Wadkins, Tutor, plaintiff, assigns the following errors in the records and proceedings of the said case:

The Supreme Court of Louisiana erred in holding and deciding that the land entered under the homestead laws by W. H. Wadkins, during his marriage with Mary Jane McCathron, and to which patent issued to said William H. Wadkins under and by virtue of his consummation of the said homestead entry, did not fall into the community of acque-ts and gains between the said W. H. Wadkins and his wife, the said Mary Jane McCathron; and, therefore, in holding and deciding against the claim of the plaintiff.

The said errors are more particularly set forth as follows:

117 The Supreme Court of Louisiana erred in holding and deciding:

1. That, though it is the settled law of Louisiana as laid down in the case of Crochet vs. McCamant, 116 La. 1, that where a homestead entry was made by the husband during his marriage, and prosecuted to patent by final proof made after the dissolution of the community, the patent so obtained is to the community and the property community property; yet that the mere settlement of the husband upon the land eight months prior to his marriage and eighteen months before his entry, prevented the property from falling into the community.

2. That under the terms of the Act of Congress approved May 14th, 1880, from the moment of the settlement of W. H. Wadkins upon the land in controversy, with a view of subsequently making a homestead entry, that he had a conditional ownership of the land; and that the accomplishment of the conditions under which he held it retroacted to the date of his settlement and that, consequently, the land was acquired before his marriage and fell into his separate estate; or, in other words, was acquired by him as of the date of his settlement, regardless of the date of his entry.

3. That the date of the acquisition of the property, in the determination of whether it fell into the community existing between Wadkins and his deceased wife, was to be determined by the date of the settlement of Wadkins upon the land and not by the date of his entry of the same at the Land Office.

4. That mere settlement upon vacant land of the United States, subject to homestead entry, by a citizen of the United States, though with a view to homestead entry, is, as to the Government
118 of the United States, equivalent to a homestead entry and confers upon him property rights as against the United States.

5. That the settlement upon lands of the United States, subject to homestead entry, by a citizen of the United States, who settles thereon with a view of subsequently making an entry, gives to the settler, under the Act of Congress approved May 14th, 1880, greater or higher rights than were granted the settler with a view to pre-emption under the pre-emption laws.

6. That the Act of Congress, approved May 14th, 1880, gives to the settler, who intends to make a homestead entry, rights preceding his entry other than those of preference in the making of his entry over other otherwise qualified persons, under the terms and provisions of the statute.

7. That the proviso in the Act of Congress approved May 14th, 1880, "the same as if he settled under the pre-emption laws," which provision in the statute carries with it the uniform jurisprudence of the Supreme Court of the United States as laid down in the cases of Frisbee vs. Whitney, 9 Wallace 187, the Yosemite Valley case, 15 Wallace, 777, and the subsequent jurisprudence, should be ignored and given no effect.

8. That Wadkins by his failure to exercise his rights of preference in the making of his entry under the statute was not, immediately preceding his entry at the Land Office, a mere squatter upon the public domain.

9. That the Act of Congress approved May 14th, 1880, caused the settlement for all purposes, when followed by an entry, even though long after the statutory term of preference had ceased, to take the place of the entry and to be treated as such.

119 10. That the Act of Congress approved May 14th, 1880, caused the title of the entryman to begin from the date of his settlement and not from the date of his entry; and that it did not have the effect merely of making his right of occupancy date from the settlement when timely availed of and of operating by the doctrine of relation so as to cut off adverse intervening claims.

For which errors, the plaintiff, W. H. Wadkins, Natural Tutor of Effie Bell Wadkins, prays that the said judgment of the Supreme Court of the State of Louisiana be reversed and judgment rendered in favor of the plaintiff; and for all costs.

(Signed) THIGPEN & HEROLD,
Attorneys for W. H. Wadkins, Natural Tutor of Effie Bell Wadkins.

The above and foregoing petition having been read and considered, it is ordered that writ of error issue as prayed for, on the plaintiff's furnishing bond with sufficient security and conditions according to law, in the sum of Two Thousand Dollars, without supersedeas.

Dated April 8th, 1912.

(Signed) JOS. A. BREAUX,
Chief Justice of the Supreme Court of Louisiana.

(Endorsed:) W. H. Wadkins, Natural Tutor, versus Producers Oil Co. et. al.—Petition for Writ of Error, Assignment of Errors and Prayer for Reversal.—Filed Apl. 6th, 1912.

(Signed) PAUL E. MORTIMER, *Clerk.*

120 *Copy of Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between William H. Wadkins, Natural Tutor of Effie Bell Wadkins, Minor, as plaintiff, and the Producers Oil Company, a corporation, and the Atlanta and Shreveport Oil and Gas Company, a corporation, as defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of the clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said William H. Wadkins, Natural Tutor of Effie Bell Wadkins, as by his complaint appears.

We being willing that error, if any hath been should be duly
121 corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there

held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Edward D. White, Chief Justice of the Supreme Court, the 12th day of April, in the year of our Lord one thousand nine hundred and twelve.

[SEAL.] (Signed) H. J. CARTER,
Clerk of the District Court of the United States for the Eastern District of Louisiana.

Allowed by,
(Signed) JOSEPH A. BREAUX,
Chief Justice Supreme Court of Louisiana.

(Endorsed:) No 18,851. W. H. Wadkins, Natural Tutor, Plaintiff-in-error, versus Producers Oil Co. et al. Defendants-in-error. (Writ of Error.) Copy of a Writ of Error lodged in the Clerk's Office of the Supreme Court of Louisiana, in pursuance of the statute in such cases made and provided, this 12th day of April, one thousand nine hundred and twelve. (Signed) S. L. Herold, Attorney of Plaintiff in Error. Filed Ap'l 12, 1912. (Signed) Paul E. Mortimer, Clerk.

122 *Copy of Bond.*

W. H. WADKINS, Natural Tutor, Plaintiff in Error,
vs.
PRODUCERS OIL COMPANY et al., Defendants in Error.

Know all men by these presents: That we, W. H. Wadkins, Natural Tutor of Effie Bell Wadkins, as principal, and H. L. Heilperin, as surety, are held and firmly bund unto the Producers Oil Company and unto the Atlanta & Shreveport Oil & Gas Company, in the sum of Two Thousand ($2000.00) Dollars, for the payment of which well and truly to be made, we bind ourselves firmly and in solido by these presents.

Sealed with our seals and dated this 11th day of April, 1912.

The above and foregoing obligation is such that,

Whereas, the above named plaintiff in error seeks to prosecute his writ of error to the United States Supreme Court to reverse the judgment rendered in the above entitled cause, by the Supreme Court of the State of Louisiana,

Now, therefore, if the above named plaintiff in error shall prosecute his said writ of error to effect and answer all costs and damages that may be had, if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and effect.

(Signed) W. H. WADKINS,
Natural Tutor of Effie Bell Wadkins.
(Signed) H. L. HEILPERIN.

Attest:
(Signed) IKE MUSLOW.
(Signed) D. W. HARRELL.

STATE OF LOUISIANA,
Parish of Caddo:

H. L. Heilperin, being duly sworn, on oath deposes and
123 says that he is of lawful age and is a citizen of the State of Louisiana and knows the contents of the foregoing instrument to which he has attached his name; that he is worth the sum of Fifty Thousand Dollars over and above all debts, liabilities and exemptions.

(Signed) H. L. HEILPERIN.

Sworn to and subscribed before me, this April 11th, 1912.

[SEAL.] (Signed) WHEELER SHROPSHIRE,
Notary Public.

Bond approved.
Dated April 12th, 1912.

(Signed) JOS. A. BREAUX,
Chief Justice of the Supreme Court of Louisiana.

(Endorsed:) No. 18,851. Supreme Court of Louisiana. W. H. Wadkins, Natural Tutor, Plaintiff in Error vs. Producers Oil Company, et al., Defendants in Error. Bond. Filed April 12, 1912. (Signed) Paul E. Mortimer, Clerk.

124 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between William H. Wadkins, Natural Tutor of Effie Bell Wadkins, Minor, as plaintiff, and the Producers Oil Company, a corporation, and the Atlanta and Shreveport Oil and Gas Company, a corporation, as defendants, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision was in favor of such their validity;
or wherein was drawn in question the construction of the
124½ clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said William H. Wadkins, Natural Tutor of Effie Bell Wadkins, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice

done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, within 30 days from the date hereof, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Edward D. White, Chief Justice of the said Supreme Court, the 12th day of April, in the year of our Lord one thousand nine hundred and twelve.

H. J. CARTER,
Clerk of the District Court of the United States
for the Eastern District of Louisiana.

Allowed by
JOS. A. BREAUX,
Chief Justice Supreme Court of Louisiana.

[Endorsed:] No. 18,851. W. H. Wadkins, Natural Tutor, plaintiff-in-error, versus Producers Oil Co. et al., defendants-in-error. Writ of Error. Filed Apr. 12, 1912. Paul E. Mortimer, clerk.

125 Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the said court, do hereby certify that there was lodged with me, as such clerk, on the 12th day of April, 1912, in the matter of W. H. Wadkins, Natural Tutor of Effie Bell Wadkins, vs. Producers Oil Company et al., the following, to-wit:

1. The original bond, of which a copy is herein set forth.
2. Three copies of the writ of error, as herein set forth,—one for each defendant, and one to file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office, in New Orleans, Louisiana, this April 12th, 1912.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER,
Clerk of the Supreme Court of Louisiana.

126 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Atlanta & Shreveport Oil & Gas Company, a corporation under the laws of the State of Louisiana and domiciled in Shreveport, Caddo Parish, Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Wash-

ington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein Wm. H. Wadkins, Natural Tutor of Effie Bell Wadkins, is plaintiff in error, and you and the Producers Oil Company are defendants in error, to show cause, if any there be, why the judgment rendered against the said Wm. H. Wadkins, Natural Tutor, plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States, this 12 day of April in the year of our Lord one thousand nine hundred and twelve.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] Supreme Court of the State of Louisiana. No. 18,851. W. H. Wadkins, Natural Tutor, plaintiff-in-error, vs. Producers Oil Co. et al., defendants-in-error. Citation. Filed Apl. 18, 1912. Paul E. Mortimer, Clerk.

Sheriff's Return.

Marshal's Docket No. 1115.

4/13/12.

Received the within citation on the 13th day of April, 1912, and on the same day served the same upon the Atlantic & Shreveport Oil & Gas Company by handing a certified copy thereof to S. B. Hicks, Vice-President of the said Company, at its office in the city of Shreveport, Caddo Parish, La.

B. INGOUF,
United States Marshal, Western District of Louisiana,
By J. M. GRIMMET,
Chief Deputy.

Marshal's fee, $2.00, paid by plaintiff in error.

127 THE UNITED STATES OF AMERICA:

Supreme Court of the State of Louisiana.

The President of the United States to Producers Oil Company, a corporation under the laws of the State of Texas, with its Louisiana domicile in Shreveport, Caddo Parish, Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington, within thirty days from the date hereof pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the State of Louisiana at New Orleans, wherein Wm. H. Wadkins, Natural

Tutor of Effie Bell Wadkins, is plaintiff in error, and you and the Atlanta & Shreveport Oil & Gas Co. are defendants in error, to show cause, if any there be, why the judgment rendered against the said Wm. H. Wadkins, Natural Tutor, plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Edward Douglas White, Chief Justice of the Supreme Court of the United States, this 12th day of April in the year of our Lord one thousand nine hundred and twelve.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice of the Supreme Court of the State of Louisiana.

[Endorsed:] Supreme Court of the State of Louisiana. No. 18851. W. H. Wadkins, natural tutor, plaintiff-in-error, vs. Producers Oil Co. et al., defendants-in-error. Citation. Filed Apl. 18, 1912. Paul E. Mortimer, Clerk.

Sheriff's Return.

Marshal's Docket No. 1115.

4/13/12.

Received the within citation on the 13th day of April, 1912, and on the 15th day of April, 1912, executed the same by service upon the Producers Oil Company by handing a certified copy of the said citation to its authorized agent, C. P. Clayton, in person.

B. INGOUF,
United States Marshal,
Western District of Louisiana,
By J. M. GRIMMET,
Chief Deputy.

Marshal's fee, $2.00, paid by plaintiff in error.

128 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, do hereby certify that the foregoing one hundred-twenty-seven pages contain a true and complete copy of the proceedings had in the First Judicial District Court, for the Parish of Caddo, in a certain suit wherein W. H. Wadkins, Tutor, was plaintiff, and Producers Oil Company, et al., were defendants; also of all the proceedings had in this Supreme Court on the appeal taken by defendants, which appeal is now on the files thereof under No. 18,851; and also of all the proceedings taken by the plaintiff in error upon his application to the Supreme Court of the United States for a writ

of error, including the original writ of error, the two citations with the Sheriff's return thereon, and the certificate of the Clerk of the Supreme Court, to be found at page 125.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court, at the city of New Orleans, this the 18th day of April, A. D. 1912.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER, *Clerk.*

129 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Joseph A. Breaux, Chief Justice of the Supreme Court of the State of Louisiana, do hereby certify that Paul E. Mortimer is the clerk of the Supreme Court of the State of Louisiana; that the signature of Paul E. Mortimer to the foregoing certificate is in the proper handwriting of him, the said Clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this the 18th day of April, A. D. one thousand nine hundred and twelve.

[Seal Supreme Court of the State of Louisiana.]

JOS. A. BREAUX,
Chief Justice.

130 UNITED STATES OF AMERICA,
State of Louisiana:

Supreme Court of the State of Louisiana.

I, Paul E. Mortimer, Clerk of the Supreme Court of the State of Louisiana, hereby certify that the Supreme Court of the State of Louisiana is the highest Court of law in Louisiana, and that the Honorable Joseph A. Breaux is the Chief Justice of said Court and that his signature to the above certificate is genuine.

In testimony whereof I hereunto set my hand and the seal of the Court aforesaid, at the city of New Orleans, this the 18th day of April, A. D. one thousand nine hundred and twelve.

[Seal Supreme Court of the State of Louisiana.]

PAUL E. MORTIMER, *Clerk.*

Endorsed on cover: File No. 23,193. Louisiana Supreme Court. Term No. 638. William H. Wadkins, natural tutor of Effie Bell Wadkins, minor, plaintiff in error, vs. Producers Oil Company and Atlanta and Shreveport Oil & Gas Company. Filed April 29th, 1912. File No. 23,193.

JAN 29 1913
JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 638.

WILLIAM H. WADKINS, NATURAL TUTOR, PLAINTIFF IN ERROR,

versus

PRODUCERS OIL COMPANY ET AL., DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

S. L. HEROLD,
J. A. THIGPEN,
W. P. HALL,
Counsel for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

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SUPPLEMENTAL BRIEF FOR PLAINTIFF IN ERROR.

Under the system of community property in effect in Louisiana all "estates" which either husband or wife may acquire during marriage (except by gratuitous title to one of the spouses) fall into the community.

Civil Code, article 2402, cited page 4 of original brief.

It is the established jurisprudence of the Louisiana courts that in the term "estates" is comprised every form of in-

choate title under which a vested right is acquired to property and which is capable of ripening into a perfect title.

116 La., 1, Crochet *vs.* McCamant, and authorities there cited.

Plaintiff's suit is bottomed upon this jurisprudence, which the last opinion of the court below reaffirms (Printed Record, p. 69), the vested right or imperfect ownership or inchoate title which she presents as the basis of her title, being a homestead entry made during the *régime* of the community.

The question thus presented by her was whether a homestead entry vests a conditional title or rights analogous thereto, or whether it operates, as contended by defendant, to vest only a right of habitation and of cultivation.

This was a Federal question.

199 U. S., 388, McCune *vs.* Essig, and other cases cited on page 9 of our original brief.

As against the question so raised, defendant also urged that under the homestead statutes the conditional or imperfect title, under which plaintiff in error claims, was originated not by the homestead entry, but by the preceding settlement of the entryman; that is, by the mere act of settling upon the land with a view to its future acquisition by homestead entry, the settlement having been made before, and the entry during the marriage.

As against this plea, plaintiff in error claimed that the community's interest in the land was acquired by the entry. Such claim could not have been made by written pleadings, for the statute law of Louisiana specially prohibits the filing of replications.

> "When the defendant, in his answer, alleges on his part new facts, these shall be considered as denied by the plaintiff; therefore neither replication nor rejoinder shall be admitted."
>
> Code of Practice, article 329.

See—

Stewart *vs.* Kahn, 11 Wallace, 493.

The jurisprudence under this article is that every means of attack and defense is open to plaintiff, who is not permitted to file additional pleadings.

30 La. Ann., 1210, Bayly & Pond *vs.* Stacey.
122 Louisiana, 281, Life Ins. Co. *vs.* Van Schlemmer.
125 Louisiana, 811, School Directors *vs.* Alexander, and authorities cited therein.

Consequently plaintiff specially claimed, in the only manner permitted her by the State practice, a right under the laws of the United States; that is, her right by virtue of the entry, as against the claim that the homesteader's ownership began with his settlement. This contention is fully borne out by the opinion of the Supreme Court of Louisiana, refusing a rehearing.

Printed Record, pages 69 and 70.

This opinion directly presents the issue as claimed, raised. and decided, to wit:

> "What the court has held is that the investiture of the title dates from the settlement upon the land. and not, as contended by plaintiff, from the filing of the application for entry."

It has always been the law as to cases coming here on writ of error to the Supreme Court of Louisiana that jurisdiction may be made to appear solely from the statement of facts and the decision made by that court.

16 Peters, 281, Armstrong *vs.* The Treasurer.
6 Wallace, 124, Walker *vs.* Villavaso.
12 Howard, 165, Railway Co. *vs.* Marshall.
11 Wallace, 493, Stewart *vs.* Kahn.

But it is now the established jurisprudence of the court that, in any case, no particular form of raising the Federal question is necessary, but that wherever the same is raised in accordance with the State practice, and in such manner

as to bring the claim to the attention of the State court, it is sufficient.

172 U. S., 58, Green Bay Canal Co. *vs.* Patten Paper Co.

189 U. S., 180, San Jose Co. *vs.* San Jose Ranch Co.

And that where the decision brought up for review clearly shows that the highest court of the State assumed the Federal question to be in issue, and actually decided against such claim, this court has jurisdiction to re-examine that question if its decision was essential to the judgment below.

204 U. S., 299, Montana *ex rel.* Haire *vs.* Rice, and authorities there cited.

Consequently this case is properly now before the court if the decision of the question brought up was essential to the judgment of the Louisiana Supreme Court.

A reading of the final opinion (Record, p. 69) is absolute demonstration that the decision turned squarely upon this point, for the opinion so states.

Counsel for defendants in error have in their briefs persistently contended that plaintiff's case rests on the doctrine of relation. But it does not.

That doctrine as defined by this court is simply this: That as between two conflicting titles, that will be preferred which was first in time in the process of acquisition.

91 U. S., 330, Shepley *vs.* Cowan.

219 U. S., 380, Weyerhauser *vs.* Hoyt.

The doctrine applies only as to separate conflicting grants emanating from the same source.

The question we raise, however, is entirely different, and is this:

At what time and by what procedure did the entryman (the head and master of the community) first acquire a property right in the homestead?

Plaintiff in error contends that it was by the entry and during the marriage; defendant in error, that it was by settlement and prior to marriage; and the decision of the State Supreme Court maintained the latter contention.

4 Cranch, 382, Matthews *vs.* Zaul.
1 Peters, 664, Ross *vs.* Doe.
16 Peters, 249, City of Mobile *vs.* Eslava.

Our position is sustained by the following cases from this court:

112 U. S. 76, United States *vs.* Waddell;
113 U. S., 169, Railway Co. *vs.* Dunmeyer;
177 U. S., 349, Black *vs.* Jackson;
199 U. S., 342, Hafemann *vs.* Gross,

While the decisions cited by defendant in error bear upon entirely different aspects of the statute, as we believe the discussion in our original brief (pages 25 *et sequitur*) demonstrates.

The concluding words of the statute "the same as if he settled under the pre-emption law," construed, as they must be, in the light of the jurisprudence under that law, show that settlement was never intended to vest an interest in the land, such as that acquired by the entryman.

9 Wallace, 187, Frisbee *vs.* Whitney.
15 Wallace, 77, Yosemite Valley case.

See also opinion of Attorney General McVeagh (17 Op. Atty. Gen., 160), in which this distinction is clearly drawn.
Also see 178 Fed., 798, United States *vs.* Timber Co.

We contend upon this point for the identical principle decided in Maynard *vs.* Hill, 125 U. S., 215, under the Oregon Donation act, which so well fits the case of the mere settler prior to entry: that nothing is acquired by mere settlement and cultivation which gives anything more than a mere temporary possessory right.

The homestead entry, on the other hand, is a contract with the Government, conferring a vested right capable of ripening into a perfect ownership, and, hence, is a "purchase" under the Louisiana Code.

Respectfully we submit that the motion to dismiss or affirm should be overruled.

S. L. HEROLD,
J. A. THIGPEN,
W. P. HALL,
Attorneys for Plaintiff in Error.

Supreme Court of the United States

October Term, 1912.

No. 638.

WILLIAM H. WADKINS,

NATURAL TUTOR OF ETTIE BELL WADKINS, MINOR,

Plaintiff in Error.

versus

PRODUCERS OIL COMPANY

AND

ATLANTA & SHREVEPORT OIL & GAS COMPANY,

Defendants in Error.

In Error to the Supreme Court of the State of Louisiana.

Brief of Plaintiff in Error, on Motion to Dismiss or Affirm.

W. P. HALL,
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S. L. HEROLD,
Attorneys for Plaintiff in Error.

CLARK BROS. PRINTING CO., SHREVEPORT, LA.

Supreme Court of the United States

October Term, 1912.

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WILLIAM H. WADKINS,

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Plaintiff in Error.

versus

PRODUCERS OIL COMPANY

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ATLANTA & SHREVEPORT OIL & GAS COMPANY,

Defendants in Error.

In Error to the Supreme Court of the State of Louisiana.

Brief of Plaintiff in Error, on Motion to Dismiss or Affirm.

Plaintiff in error, plaintiff below, instituted this suit as a petitory action in the First Judicial District Court of Louisiana, claiming owenrship of an undivided

one-half interest in a tract of land in Caddo Parish in said state. The title was claimed for plaintiff as the sole heir and successor in title of her mother, as partner in the community formerly existing between her and plaintiff's father, and present tutor.

It was alleged in the petition that during the existence of the marriage, (and hence during the regime of the community of acquets and gains incidental to the marriage), the head of the community entered under the homestead laws of the United States one hundred and sixty acres of land, of which the undivided one-half ownership was claimed in the petition; and that upon his compliance with the provisions of the law, patent issued from the United States in the name of W. H. Wadkins, thereby conveying the full title of the government to the community. (Printed Record, page 1.)

The defendant, the Producers Oil Company, answered (Printed Record, page 4), that under the provisions of the statutes of the United States relating to homestead entries, the real date of Wadkins' entry was December 12th, 1893—a date preceding his marriage; and, further, that under the said homestead statutes, and the laws of the United States, plaintiff had no right, title or interest in the lands described in the petition.

The other defendant answered, also, that Wadkins had entered the lands before the date of his marriage and "that, although the certificate of the said homestead entry, as issued by the United States Government, bears date of February 25th, 1895, the true date of the entry was as aforesaid, and in recognition of this fact, a patent for the said land to the said W. H. Wadkins was signed by President McKinley, issued December 12th, 1898, thereby fixing and determining date of entry as being at least five years prior thereto." (Printed Record, page 12).

The law of Louisiana prohibits the plaintiff from filing a replication to defendant's answer. But all matters of fact and conclusions of law therein set up are deemed to be at issue without further pleading by plaintiff. (*Code of Practice, Article* 329).

Stewart vs. Kahn, 11 *Wallace* 493.

The theory upon which the defendants contended that plaintiff's entry was made prior to the marriage was, that the plaintiff was living upon the land before his marriage, with the intention of subsequently making a homestead entry thereon; and that under the act of Congress, approved May 14th, 1880, amending the homestead laws, the entry, when formally made at the Land

Office, was deemed for all purposes to have been made at the date upon which he made his settlement upon the future homestead.

Plaintiff in error argued as against this, that a proper construction of the homestead laws, as amended by the act of 1880, was that such pre-entry settlement was efficacious only to cut off the intervening rights of third persons; but that no vested interest in the land as against the United States was acquired by the settler until the entry of the land.

Judgment was rendered for plaintiff in the District Court, but was reversed on appeal, the Supreme Court upholding the defendants' construction of the act of 1880; and from this judgment, denying the plaintiff's asserted title, based upon a right and title under the homestead laws of the United States, to-wit, upon the plaintiff's asserted title through the homestead entry made by the community, the plaintiff prosecuted this writ of error. The jurisdiction of this court to entertain this case is clear when we consider the issues of the case thus raised.

Article 2402 *of the Civil Code* reads as follows:

> "This partnership or community consists of the profits of all the effects of which the husband has

the administration and enjoyment, either of right or in fact, of the produce of the reciprocal industry and labor of both husband and wife, and of the estates which they may acquire during the marriage, either by donations made jointly to them both, or by purchase, or in any other similar way, even although the purchase be only in the name of one of the two and not of both, because in that case the period of time when the purchase is made is alone attended to, and not the person who made the purchase."

The law of Louisiana is also settled by the decision of the Supreme Court in the case of *Crochet vs. McCamant*, 116 *La.*, 1 (which, by the way, was reaffirmed and approved in the opinion rendered in this case on application for rehearing), to the effect that a homestead entry, made during the existence of the community by its head and master, is made for the benefit of the community; and that when the provisions of the law are accomplished, and patent issues to the entryman, the fee simple title to the land is in the community formerly existing, or in its successors, if it has been dissolved prior to the making of final proofs. The reason given in the *Crochet case*, 116 *La.*, 7, is as follows:

"Under the statute, therefore, there comes into existence, in favor of the homesteader, as an effect of the entry, a certain right which in the language of Attorney-General McVeagh, 'attaches to the land'; that is to say, there

is established between the homesteader and the land a direct relation, by virtue of which he is invested with the moral power of holding it as against the whole world, the government included, and of appropriating the fruits, and by virtue of which he is further invested with the absolute right to a patent upon fulfilling certain conditions entirely potestative on his part—a right defeasible only in the event that before the fulfillment of the conditions he dies, leaving a widow or heirs. Now, if this relation between the homesteader and the land be not an ownership, what is it? If not an ownership, how is it to be classed in our system of land tenure? Evidently it is what is described by our Code as an imperfect ownership, by which is meant an ownership which does not invest the titulary with the right to use, enjoy, and dispose of the property in an unlimited manner. It is furthermore a conditional ownership. But an imperfect conditional ownership, under our Code, is an ownership; and under our Code the accomplishment of a condition has a retroactive effect to the moment of the birth of the conditional right, whereby matters are placed in the situation in which they would have been, if, from the beginning, the right had been absolute."

The authorities in support of this proposition are reviewed by the court, but for the purposes of this motion, we deem it unnecessary to discuss these reasons; and take it that it will be granted that the state's jurisprudence, in so far as it is capable of settling the matter is settled, to the effect that a homestead entry conveys a conditional title; that such entry made by the husband

is the property of the community; and that, regardless of any dissolution thereafter, patent subsequently issued to the entryman, by the perfection of his entry, vests the complete title of the government in the community, or in the successors of the partners thereof.

In the case at bar, it was alleged and admitted that W. H. Wadkins, being at that time the husband of plaintiff's mother, entered the southeast quarter of Section Three (3), Township Twenty (20) North, Range Sixteen (16) West, at the United States Land Office, by filing his affidavit and paying the necessary fee, and otherwise complying with the provisions of the statute; and that Wadkins subsequently, but after the death of his wife, completed the necessary term of residence, made his final proofs, and received his patent. Such a case, under the decisions of the Louisiana Supreme Court, and as expressly stated by that court in its opinion refusing a rehearing, would have entitled plaintiff to judgment. The proof showing, however, that prior to his marriage, Wadkins had settled upon the land with the intention of subsequently making a homestead entry, and that he was a single man at the date of his settlement, the court upheld the defendants' theory that the date of entry must be taken for all purposes as of the

date of the settlement; and that the settlement, itself, and not the entry vested in Wadkins a conditional title to the land.

Thus it appears that plaintiff's suit is bottomed upon a right claimed by her under the laws of the United States, to-wit: that under said laws, a vested interest, or inchoate title, was acquired by the homestead entry. Upon defendants' then asserting that under a proper construction of the homestead laws, the entry must be deemed made as of a date preceding her mother's marriage, and, hence, that the inchoate or imperfect title was acquired at such a date; she answered that the defendants' position was not a proper construction of the laws of the United States, but that under the said laws a vested interest was first acquired and a property right first vested in the community of which he mother was a partner by the entry of the land made by the head of the community. That such entry first vested a property right in her father as the head of the community; and that, through, and under the perfection of the conditional title thus vested, and the death of her mother, she was, and is now, the owner of a half interest in the land.

This is clearly the assertion of a right or title under the laws of the United States and gives this court juris-

diction of this writ of error under the judiciary act. For whatever interest arose in the head of the community by virtue of his entry depended upon the laws of the United States:

199 *U. S.* 388, *McCune vs. Essig;*

147 *U. S.* 242, *Bernier vs. Bernier;*

152 *U. S.* 65, *Hutchinson Invest. Co. vs. Caldwell;*

135 *U. S.* 483, *Anderson vs. Carkins.*

It has been the uniform jurisprudence of this court from the beginning that where the plaintiff claims title under one construction of an act of Congress, and defendant under another construction of the same act, and the decision of the highest court of the state is against such right and title, claimed by either, a case is presented within the jurisdiction of this court.

4 *Cranch* 382, *Matthews vs. Zane;*

1 *Peters* 664, *Ross vs. Doe;*

16 *Peters* 249, *City of Mobile vs. Eslava.*

The law of the state being settled that the date of the acquisition of the inchoate title *quoad* the community, determines the status of the property, and it being the settled jurisprudence of the state that the homestead entry does vest such an inchoate title, the question

presented to that court was whether that entry should be deemed under the Federal laws to have been made at the date on which it was actually made, or to have been made at the prior date, which, under the defendants' construction of the statutes, determined the date of the entry and the beginning of title.

This is purely a Federal question, and, even though it should be held after full argument that the settled jurisprudence of the state is wrong, still the question of jurisdiction is disposed of by the fact that under the decision of the state court, itself, the only question considered and decided was the construction of the act of Congress of 1880, and the subsequent denial by that construction of the plaintiff's right, asserted under the homestead laws. The fact that the community laws of Louisiana are involved in the case does not affect the jurisdiction of this court. For, as stated by the court below (Printed Record, page 69), the decision of that question was held to depend solely and alone upon the construction to be given to the act of 1880 as applied to the facts of this case. That the final decision of the case, in its last analysis may involve a question of state law does not prevent such a Federal question being presented as will sustain the jurisdiction of this court.

190 *U. S.* 452, *Kean v. Calumet Canal & Imp. Co.;*
190 *U. S.* 508, *Hardin vs. Shedd;*
185 *U. S.* 54, *French-Glenn Live Stock Co. vs. Springer.*

The Federal question which we have raised, and upon which the plaintiff in error seeks to have the decision below reversed, is fully set up in our assignment of errors, which is a part of the petition for writ of error (Printed Record, page 72); and there is no merit whatever in the argument of the defendant in error, that no Federal question is shown in the petition. No statute or rule of court requires in any petition more than a prayer for the writ of error, but the assignment of errors contained here in the petition fully discloses the nature of the case and the errors of which we are complaining.

The plaintiff in error asserting a right or title under the laws of the United States, which was adversely decided by the highest court of the state, it must follow that this court has jurisdiction, if under the jurisprudence of this court such right was specifically set up and claimed in the court below, and if the decision of the court below was against the right or title thus claimed.

Even if it should be held that the petition (Printed Record, page 1) fails to specifically set out the title

claimed under the Federal laws, yet the identical question which it is sought here to review was in fact distinctly urged and set up in the lower court, and in the Supreme Court of the State, in a manner proper under the Louisiana practice.

Stewart vs. Kahn, 11 *Wallace* 493.

In the argument of the case in the Supreme Court of the State an opinion was handed down by Chief Justice Breaux, which purported to be the decision of the Supreme Court, and which in effect overruled the prior jurisprudence of the state court by holding that property acquired under the homestead laws could not fall into the community, unless final proof was made during the existence of the marriage.

Plaintiff then, as specially permitted by statute (*Louisiana Code of Practice, Article* 912), filed a petition for rehearing, (Printed Record, pp. 66-67), in which the right and title under and by virtue of the Federal laws, under which plaintiff was claiming, were distinctly and specifically set forth; and a decision was rendered in answer to this, refusing a rehearing.

Under the uniform jurisprudence of this court, the Federal question was, at least, by the application for rehearing, thus answered, timely raised.

181 *U. S.* 589, *Mallett vs. North Carolina;*

184 *U. S.* 534, *M. K. & T. Ry. Co. vs. Elliott;*

193 *U. S.* 85, *Leigh vs. Green;*

204 *U. S.* 463, *McKay vs. Kalyton;*

219 *U. S.* 158, *Kentucky Union Co. vs. Kentucky.*

The opinion of the Supreme Court of Louisiana, refusing the application for rehearing, is the only opinion in the record which is the opinion of the court. In this opinion (Printed Record, pafe 68, et seq.) it is expressly said that the opinion handed down by Chief Justice Breaux was not that of the court, but that the decree was based entirely upon the court's construction of the act of May 14th, 1880, to the effect that under said act the settlement upon the land with a view to making homestead entry was in itself the entry.

A reading of this opinion clearly demonstrates that the right and title which we are here asserting was specifically set up, argued and insisted upon, and distinctly and in terms overruled. The court said: (Printed Record, page 69).

> "But what the court has held is that the investiture of the title dates from the settlement upon the land, and not as contended by plaintiff, from the filing of the application for entry. And this, as an effect of the act of Congress of 1880, and of our codal provisions touching the retroactive operation

of the accomplishment of suspensive conditions. This retroactivity of the accomplishment of the suspensive condition is expounded in the case of Crochet vs. McCamant, supra; and is relied upon by plaintiff in the present case."

Again:

"Plaintiff's counsel lays much stress upon the qualification 'the same as if he settled under the pre-emption laws,' insisting that by said act of 1880 the nature of the right acquired by the homesteader by mere settlement was not changed but continued the same as theretofore, and that as theretofore he did not become vested with any interest in the land until the filing of his application for entry; and we must admit that we are much impressed by the argument of counsel on that point; but the Supreme Court of the United States has expressed the contrary opinion on two different occasions. True, only, *arguendo*, but our great respect for that high tribunal leads us to accept those expressions as conclusive, bearing as they do upon the interpretation of a federal statute."

It is a sufficient compliance with the words of the judiciary act, "especially set up or claimed," that the question was fully considered in the opinion of the court below and ruled against plaintiff in error.

189 *U. S.* 180, *San Jose L. & W Co. v. San Jose Ranch Co.*;

"Where it clearly and unmistakably appears from the opinion of the state court under review that a Federal question was assumed by the highest court

of the state to be in issue, was actually decided against the Federal claim, and the decision of the question was essential to the judgment rendered, it is sufficient to give this court authority to re-examine that question on writ of error."

204 *U. S.* 299, *Montana ex rel Haire vs. Rice;*

204 *U. S.* 547, *Hammond vs. Whittredge;*

198 *U. S.* 451, *Lavagnino vs. Uhlig;*

184 *U. S.* 534, *M. K & T. Ry. Co. vs. Elliott.*

And this decision, to reverse which this writ of error is prosecuted, is expressly based upon the lower court's decision of the federal question, and cannot stand, unless the court properly construed the federal statutes. For the court expressly reaffirmed its former decision in *Crochet vs. McCamant*, that the date of entry fixes the status of the title, and decided this case against the plaintiff solely and alone upon its construction of the act of 1880, that the date of settlement must be taken as the date of entry. Thus, there is no question in this case of there being a non-federal question decided broad enough to sustain the judgment. The decision complained of, rests, and must rest, under its own language, on the decision of the federal question presented.

We respectfully submit that there is no merit in the motion to dismiss and that the motion to summarily af-

firm is likewise without merit. This question, we are compelled, however, by defendants' motion to discuss.

The assignment of errors presents from various aspects the one question which we think was squarely presented to, and erroneously decided by the state Supreme Court. That decision was under the construction of the act of May 14th, 1880, the portion of which, relevant to the issues of this case, reads as follows:

> "That any settler, who has settled, or who shall hereafter settle on any of the public lands of the United States.....with the intention of claiming the same under the homestead laws, shall be allowed the same time to file his homestead application and perfect his original entry in the United States Land Office as is now allowed to settlers under the pre-emption laws to put their claims on record; and his right shall relate back to the date of settlement, the same as if he settled under the pre-emption laws."

The pre-emption laws, the rights of a settler under which are made the tests of the right of a settler with the view to homestead entry by the preceding statute, formerly constituted Section 2257 to 2274 of the Revised Statutes. Substantially, their provisions were that any citizen, not owning three hundred and twenty acres of land, who might make settlement upon the public demain, subject to pre-emption, and who inhabits and improves the same, and shall erect a dwelling thereon, is

authorized to enter not exceeding a quarter section of land, upon paying to the United States the minimum price of said land.

Thus, the pre-emption right was merely a preference right of purchase, based upon settlement and improvement, as is fully shown by the text of Sections 2264 and 2265, providing that the failure of the settler to register his declaration within a certain time should render the land vacant and subject to the entry of any other purchaser.

Therefore, under the act of 1880, the settler with a view to homestead has the same preference to make his entry within the limited time therein specified. It is clear, however, that this mere conditional right of purchase, or of entry, gave, and gives, the occupant no title whatever, legal or equitable. This is thoroughly settled in the leading cases of *Frisbee vs. Whitney*, 9 *Wallace* 187, and the *Yosemite Valley case*, 15 *Wallace* 77.

In the latter case, the court said:

"Under the pre-emption laws, merely occupying or improving any portion of the public lands of the United States, with a view to pre-emption, does not confer upon the settler any right in the land occupied as against the United States; or impair in any respect the power of Congress to dispose of the land in any way it may deem proper; and the power

of regulation and of disposition conferred upon Congress only ceases when all the preliminaries prescribed by those laws for the acquisition of title have been performed by the settler. Until such payment and entry, the acts of Congress give to the settler only the privilege of pre-emption; that is, the privilege of purchase by preference to others."

"It seems to us a little less than absurd to say that a settler, or any other person, by acquiring the right to be preferred in the purchase of property, provided a sale is made by the owner, thereby acquires the right to compel the owner to sell, or acquires such an interest in the property as to deprive the owner of the power to control its disposition."

Under these authorities, it must be taken as settled, that the occupant under the pre-emption laws had no rights, even inchoate, partaking of the nature of ownership; his right being limited to a mere preference in the purchase for a limited term, which was conditioned upon his compliance also with the other provisions of the statute. But when his title was fully earned, by compliance with the provisions of the pre-emption laws and purchase thereunder, it served then to cut off the rights of all parties whose adverse claims originated between the date of settlement and of patent.

If, however, the settler neglected to comply strictly with the law, his preference vanished; and by the express

terms of the statute, any one else could oust him, and by settlement could acquire a preference in the purchase of the land.

Such was the pre-emption law on May 14th, 1880; and that law and the jurisprudence thereunder became part of the act approved that date by the terms of the act itself. Therefore, the settler who intended to file under the homestead law was given, as to surveyed land subject to entry, thirty days in which to perfect his original entry; that is, a preference right of entry for thirty days. Hence, just as the settler under the pre-emption law had a mere preference right to purchase for cash, the prospective homesteader secured the same right to acquire under the homestead laws; that is, by homestead entry.

And if, as is settled under the pre-emption laws, this preference partook in no sense of the nature of property, such must still be the law under the act under construction, which expressly incorporates in itself the provisions of the pre-emption law.

Now while the settlement preceding the entry "confers no rights in the land as against the United States or impairs in any respect the power of Congress to dispose of the land in any way it may deem proper," the home-

stead entry vests in the entryman an inchoate title to the land.

177 *U. S.* 349, *Black vs. Jackson.*

For, as stated by this court, it is an existing contract for the purchase of such land.

112 *U. S.* 76, *United States vs. Waddell.*

As said by *Attorney General McVeagh*, 17 *Opinions Attorneys General, page* 160, in an opinion which has been approved by this court in 133 *U. S.* 541, *Sturr vs. Beck*, as well as by the Supreme Court of Louisiana in 116 *La.* 6, *Crochet vs. McCamant*, and by the Supreme Court of Minnesota in 20 *N. W.* 229, *Railway Company vs. Sture*,

> "It vests an equitable interest in the land, subject to future performance by the settler of certain conditions; and until forfeited by failure to perform the conditions, it must prevail, not only against individuals, but against the government."

In this opinion the distinction is sharply drawn between the rights of the homestead entryman and those of the pre-emption settler. In pointing out that *the entryman* has an inchoate title, not subject to devestiture by Congress, itself, it is said that *Frisbee vs. Whitney* and the *Yosemite Valley case* had established as law that *the pre-emptioner* before final payment had no rights in

the land and it could be taken without compensation for governmental purposes.

Under these authorities the difference between the right of the *settler* and of the *entryman* stands out in bold relief. The former has only a limited preference to enter; the latter has in fact purchased. And in determining whether or not the title after patent is in the community, the Louisiana law looks to the date the purchase was contracted.

The statute provides that the community owns "the estates which they (the spouses) may acquire during marriage; because in that case the period of time in which the purchase is made is alone attended to and not the person making the purchase." *Civil Code, Article* 2402.

Hence, the sole question in this case is: When was the purchase contracted? It would be absurd to say that it was contracted before it was contracted; that is, that it began before the entry.

178 *Fed.* 798, *United States vs. Bagnell Timber Co.*

Though Wadkins settled on the land in August, 1893, before his marriage, and thereby secured a right of preference in the making of the entry for thirty days, he did not exercise this right. Before making his entry, he

remained on the land for nearly two years, during the whole of which time he was only a squatter on the public domain and subject to eviction at the instance of any qualified citizen who might have wished to enter the land. Long before his marriage, therefore, Wadkins had lost even the preference and had become a naked squatter, with no rights, not only as against the government, but even as against any individual who might have wished to acquire the land.

Now, the whole case is this: That, while under the terms of the act of 1880, when Wadkins did enter the land and perfected his title by compliance with the homestead laws, the doctrine of relation would have applied to cut off any intervening rights that might have been initiated by third persons between the date of his settlement and the securing of his patent. But by no construction of the statutes, we contend, can it be gathered that any *vested right* was acquired in the land, or any inchoate title secured merely by the settlement.

Exactly the same distinction exists here as was clearly brought out by this court in 208 *U. S.* 257, *Minnesota, etc., Ry. Co. vs. Doughty, and* 224 *U. S.* ..., *Stalker vs. Oregon S. L. Ry. Co.*, to-wit:

"The distinction and essential difference between a mere staking out of a route, which, being the act of the company alone, is changeable at its will, and actual construction, which necessarily fixes the position of the route and consummates the purpose for which the grant of a right of way is given, is very obvious."

The same principle is fully discussed and cases reviewed in 219 *U. S.* 380, *Weyerhaeuser vs. Hoyt.*

To illustrate: The homestead laws provide that the final proofs shall be made not sooner than five, nor later than seven years from the entry. Under the act of 1880 the pre-entry occupancy of the homesteader may, at his option, be taken into account. But this was merely a gratuity, of which he might avail himself or not, at his pleasure. For instance, if one settled, say on January 1st, 1900, and made his entry on January 1st, 1904, he might prove up on January 2nd, 1905; or at any date not later than January 1st, 1911. If he chose to avail himself of the latter date, his occupancy prior to entry could not be counted against him. But if he chose to prove up an earlier date, he might at his option, take credit for such occupancy. This right, which he secured by his settlement, is, therefore, a mere floating privilege; and does not give rise to any proprietary interest, legal or equitable.

The entry, on the other hand, is an essential condition to the acquisition of the homestead. There can be no earning of the homestead without an entry. It is the purchase; the further compliance with the statute, the payment. By the entry for the first time, the proprietary right of the homesteader attaches to the land.

113 *U. S.* 169, *Kansas City Pacific Ry. Co. vs. Dunmeyer.*

In the case at bar, Wadkins had the right, as he did, to take advantage of his pre-entry occupancy; or he could have waited five years from the date of entry to make his proofs. If he had done the latter, it could not be argued that his former occupancy had any effect upon the title; and the fact that he actually availed himself of the privilege affected the title not one particle more. Though his right of occupancy related back to the settlement, his title began only when he made his entry, which was the first essential step and the cause of its acquisition. There is the same difference to which this court refers in *Stalker vs. Oregon S. L. Ry. Co., supra,* between the "non-vesting of any right as against the United States and the priority of right in the acquisition of the premises as between parties."

The doctrine of relation has nothing whatever to do

with this case. That doctrine, as applied by the courts is simply this: That as between two conflicting titles, that will be preferred which was first in time in the commencement of proceedings for the acquisition of title.

91 *U. S.* 330, *Shepley vs. Cowan;*

219 *U. S.* 380, *Weyerhauser vs. Hoyt.*

Thus, although prior to his payment, the pre-emptor had no interest in the land as against the government (just as prior to entry, the prospective homesteader has none); yet, when the conditions of the pre-emption (or homestead) law are fulfilled, the patent takes effect so as to cut off all adverse rights intervening between settlement and patent. Yet, nevertheless, it remains the law that in the case of pre-emption (before payment) and in the case of homestead (before entry) no title whatever, equitable, conditional, inchoate or imperfect vests in the settler. This is all that is meant by the decisions cited by defendants.

Maddox vs. Burnham, 156 *U. S.* 544, merely explains the statutory provisions giving the settler the preference right of entry.

Moss vs. Downman, 176 *U. S.* 413 decides that one in actual possession of land upon which a homestead

entry has been made by another who has never taken possession, may upon the relinquishment of the entry enter the land in preference to any one else.

Nelson vs. Northern Pacific Co., 188 *U. S.* 109, decides only that under the Northern Pacific grant of 1864, which excepted from the title of the railway "any sections, or parts thereof, granted, sold, reserved, *occupied by settlers*, or otherwise disposed of," a settlement on unsurveyed lands prevented the claim of the railway from attaching; so that the settler might, after survey, make and perfect his homestead entry.

St. Paul Railway Company vs. Donohue, 210 *U. S.* 44, is direct authority upon the point, that the provisions of the homestead act, authorizing the entry of a quarter section of land, meant one hundred and sixty acres of contiguous land, whether in the same legal subdivision or not; and upon the further point, which is well settled in other decisions, that where the right of the railway company had been prevented from attaching by reason of prior settlement of an individual, the relinquishment of the individual's rights had no effect in favor of the railway company, but left the land undisposed of and subject to the general land laws.

Osborn vs. Froyseth, 216 *U. S.* 571, again, merely

applied the settled law, that a railway company could not validly select lieu lands outside of the primary limits of the grant, when occupied by actual settlers.

We, therefore, submit that this writ of error properly presents a question cognizable by this court, and a serious one, and one that should, after hearing, be sustained.

Defendants in error, however, contend that the settled jurisprudence of Louisiana, to the effect that where the original entryman secures a patent under an entry made by him when married, the title is in the community, though dissolved prior to the making of final proofs, is erroneous, as opposed to the jurisprudence of this court. Counsel cites in support of his position only the case of *McCunt vs. Essig*, 199 *U. S.* 389. In that case, however, the question presented was not as to whether the title could fall into the community, but as to the status of the title when consummated, not *only by the entryman, but by one of those parties named as legal beneficiaries, in case of his death before the consummation of his entry.*

Before the decision of this court in the McCune case, the identical question had been presented to the Louisiana court and had been decided in identically the same way in 110 *La.* 435, *Richard vs. Moore.*

In the case of *Crochet vs. McCamant*, 116 *La.* 1, where the jurisprudence is reviewed, the question at issue in the *McCune* case was fully discussed and the legal difference pointed out between it and the case such as that at bar. At page 5, the court speaking of the same contention now raised by defendants in error, said:

> "The argument is only specious and the decisions are not in point. The government in offering to the homesteader the opportunity to acquire the property is at liberty to impose such conditions as it chooses; and one of the conditions is that in case he dies before the making of final proofs, whatever rights exist under the entry and the occupation, shall pass to the widow; and in her default, to his heirs; and only in default of such heirs, to his devisees. The homesteader takes the land subject to that express condition.
>
> "The decision in the case of *Richard vs. Moore* enforced that provision of the statute; and both it, and the statute it enforces, are totally inapplicable to a case like the present one, where the homesteader has not died."

It is clear that Congress could have imposed such conditions upon the acquisition of the property that it might have seen fit, and Congress has spoken in saying that those parties who take title to the land upon the death of the entryman come in as beneficiaries of the statute direct, and not through, or under, the husband.

Congress has said, or implied, nothing, however, taking the title acquired by the homesteader from the operation of the state laws of land tenure, or making any change in the status of the homestead claim in event of the death of the wife.

The reason of the disposition in favor of the widow and of the other beneficiaries is clear. The homestead law requires, as a condition to patent, that the entryman make proof that he has complied with the law. In the event of the homesteader's death, this condition becomes impossible; and the land would, therefore, in the absence of a saving clause, revert to the government. Therefore, purely out of bounty, it was provided that in the event of the homesteader's death (which, otherwise, would have terminated the entry), the widow should have the right to take the land, cultivate it, and make proofs in her own right. No such reason applies to the husband. Nor was there any reason for Congress speaking of his marital status, either at the time of entry, of proof, or of patent; for he is throughout the same person with whom the government dealt in the beginning. He made the entry and perfected it. And whether the law of the state charge all his acquisitions with the character of com-

munity, or with the right of dower, does not concern the United States.

No doubt it would have been competent for Congress to have provided that homestead entries should be the separate property of the husband, even though patented during the community; but it has not done so, and it is not here disputed that such acquisitions do belong to the community. So, Congress might have imposed upon the title flowing from the homestead patent the condition of inalienability, or the right of primogeniture. But Congress has never chosen to interfere with the local laws of the various states governing the tenure of land titles. And in the case of the homestead law, Congress has made no provision in the event of any change in marital status in the process of acquisition, or in the nature of the title secured by homestead patent, in the event of the death of the entryman's wife. He makes his final proof based upon his original entry at a time when he was the head and master of the community, which position he retains after the death of his wife *quoad* the property in the process of acquisition by the community.

Let us study the language of the act:

> "If at the expiration of such time, the person making the entry (or if he be dead, his widow; or

in case of her death, his heirs, or devisees)..... proves by two credible witnesses that he (she or they) have resided....for the term of five years.... then in such case, he (she or they)....shall be entitled to patent." (Section 2291, Revised Statutes).

There is no uncertainty in the terms of this act, but it is clear and express to the effect that the original entryman shall be entitled to a patent on proof that he has resided upon the land for five years after his entry, and on the necessary affidavit of citizenship, and on payment. The "he" who is entitled to a patent is the same "he" who has resided upon the land, and the same "he" who made the original affidavit and filing. Whatever might have been in the meanwhile the changes in his marital status does not concern the government nor affect his right to patent. The community is nowhere noticed in the law. The grant is entirely to the entryman, just as are the provisions relating to entry, occupancy, and final proof. Therefore, if he is incapable under the laws of the state of acquiring during marriage by onerous title, except as master of and for the community, there is nothing in the statute susceptible of such construction as to deny the interest of the community in the property acquired by the accomplishment of a condition initiated in its behalf.

Congress has said that a married man could make a homestead entry. The homestead entry vests an equitable interest or inchoate title. Under the state laws, the husband is the head and master of the community, to whose benefit all his acquisitions accrue. And under the state law, the perfection of an inchoate title into a fee simple title, vests the fee simple in the community, when it had acquired the original inchoate interest. And Congress having made no provision whatever for any change in the status of the title in the event of the death of the wife, it must follow that it was competent for the state courts to declare, and that hence it is the law of Louisiana, and the law of this case, that where a homestead entry is made during the existence of the community, if that entry is perfected by the original entryman, the title is in the community, or its successors, if the wife has died prior to the consummation of the title.

The case of *Krutz vs. Cunningham*, 7 *L. R. A.* (*N. S.*) 967, decided by the Washington Supreme Court, and cited by defendants in error is of no value in this case, even argumentatively. That case was decided under the Washington community statute, under which there is no

head and master, but where the husband and wife are equal partners, having joint management.

3 *Washington* 239, *Holyoke vs. Jackson;*

3 *Washington* 26, *Hoover vs. Chambers;*

31 *Washington* 393, *Ross vs. Howard.*

On the other hand, the powers of the husband as the head of the community under the Louisiana law are fully expounded by the present Chief Justice in 204 *U. S.* 69, *Garraci vs. Dastas.* See, also, 2 *La. Ann.* 226, *Guice vs. Lawrence, and* 113 *La.* 822, *Harris vs. Wafer.* These cases establish the principle that the husband is the absolute master of the goods of the community, with the right of use and abuse; and the spirit of the law as to the acquisitions made by the husband is that he is virtually the owner of the community property, in which the wife has no interest, until its dissolution; and being the master and enjoying all the benefits as such, he is charged with this duty, that all his acquisitions fall into the community. *Qui sentit commodum sentire debet et onus.*

The expressions of the Washington court in the case cited, which a reading of the case will also show to be *obiter dicta,* are of no weight here, where the only question is whether the Louisiana jurisprudence is at variance with that of this court; and if at variance,

whether that variance is upon a principle so well settled as to be beyond the pale of controversy.

But it is clear that the question here discussed has never been before this court and that it is not controlled by the *McCune* case, which decides only this: That the law of the United States, providing that the widow takes as a beneficiary of the statute, the state law of descent and distribution can be of no effect as against her. But that decision does not deny the application of the state law or community, or of the retroactive effect of the accomplishment of conditions in proper cases.

The statute makes no provision whatever as to the husband *eo nomine*, or as to any change in his marital status. The husband enters the property as the head of the community; the community acquires thereby an equitable interest, which amounts to an imperfect ownership. The husband continues to reside upon the land as the head of that community, and the statute makes no change in his status, or in the status of the entry, by reason of his wife's death, nor does it seek to deny the title of the community when the imperfect ownership of the entry ripens into the perfect ownership evidenced by the patent, issued to the original entryman, who made the entry and initiated the title as the master of the

community, and as its agent, in which capacity he received the legal title when it left the United States by patent.

When, therefore, plaintiff, asserting her rights under the homestead entry made by her father as head of the community, is met by a plea that under a proper construction of the homestead laws, no rights were acquired by such entry, the Supreme Court of Louisiana erred in denying her claim of title under such entry.

And it is most respectfully submitted that the question thus squarely raised, presented to the court according to the practice of Louisiana, and decided by the court, is one cognizable by this court on writ of error and which is entitled to full argument.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1912

No. 638

WILLIAM H. WADKINS, NATURAL TUTOR OF EFFIE BELL WADKINS, MINOR, PLAINTIFF IN ERROR,

vs.

PRODUCERS OIL COMPANY AND ATLANTA & SHREVEPORT OIL AND GAS COMPANY

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA

MOTION.

Now come the defendants in error, Producers Oil Company and Atlanta & Shreveport Oil and Gas Company, and move the court to dismiss the writ of error herein, or, in the alternative, to summarily affirm the judgment of the Supreme Court of Louisiana, because:

First. The petition for writ of error fails to show or even state that the decision was against the validity of a treaty or statute of, or authority exercised under, the

United States, or that it was against a title, right, privilege or immunity claimed under the constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, or that there exists any ground on which this court has jurisdiction.

Second. If, apart from the petition, the record be consulted, it still does not appear, and it is not a fact, that the decision was against the validity of a treaty or statute of, or authority exercised under, the United States, or that it was against a title, right, privilege, or immunity claimed under the Constitution, or any treaty or statute of, or commission held or authority exercised under, the United States, or that there exists any ground on which this court now has jurisdiction.

Third. The question involved, namely, whether in a State having laws of community property, such laws can be given effect so as to make community a tract of land entered under the homestead laws of the United States, when the statutory period of occupancy had not been completed and no patent had issued or could have issued until a date after the entryman's wife was dead, is foreclosed by a line of decisions rendered by this court culminating in McCune vs. Essig, 199 U. S., 382 (50 L. ed., 237).

Fourth. It appearing further that the entryman actually settled on the land before his marriage, and that, when final proofs were made, occupancy was claimed and allowed from the date of such actual settlement, this occurring since the enactment of May 14, 1880, the question of whether the title, if relating back, will be deemed initiated at the date of actual settlement, or at the subsequent date when formal application was filed, the entryman having married be-

tween the two dates and his wife having died before the statutory five years of occupancy was completed and patent obtained, is settled in favor of initiation at the first date by the decisions of this court in Maddox vs. Burnham, 156 U. S., 546 (39 L. ed., 527); Nelson vs. Railway, 188 U. S., 108 (47 L. ed., 406); Railway vs. Donohue, 210 U. S., 30 (52 L. ed., 945); Osborn vs. Froyseth, 216 U. S., 576 (54 L. ed., 623).

Fifth. And under no aspect of the case does there exist a real and substantial Federal question.

STATEMENT.

The proceedings sought to be reviewed herein, had in the Supreme Court of the State of Louisiana, were on an appeal from a judgment of the district court for the parish of Caddo, rendered in a cause wherein William H. Wadkins, as natural tutor of Effie Bell Wadkins, a minor, was plaintiff, and these defendants in error were defendants, involving an undivided one-half interest in 160 acres of land situated in Caddo parish, and a like proportion of the value of oil taken therefrom.

The undisputed facts, as pleaded and stipulated or proven on the trial, were that the land in controversy was a part of the public domain of the United States and subject to entry under the homestead laws when, on the 1st day of August, 1893, Wadkins, then a single man but capacitated to make homestead entry, took possession, with the intention and purpose of entering it as a homestead; that on the 24th day of June, 1894, Wadkins married Mary Jane McCatheron; that on the 23rd day of February, 1895, he filed his formal application of homestead entry, which, two days later, was duly allowed, and certificate of entry is-

med; that on the 5th day of December, 1896, his wife, the said Mary Jane, died intestate; that on the 19th day of September, 1898, he made final proofs, including a showing of the five years' occupancy required by statute, and thereafter a patent for the land was issued to him; that two children had been born of the marriage aforesaid, namely, Effie Bell Wadkins, born on the 28th day of March, 1895, and another, who died when about two years of age; and that Wadkins remarried in 1903 (Printed Record, 22).

Thus it is seen that the entryman was single when he made actual settlement on the land, but was married at the date when his formal application was filed, and was again single when the statutory occupancy was completed and proof thereof was made and the patent obtained; and it also appears that when the patent was issued on the 19th day of September, 1898, the time of occupancy was reckoned back, as the law provides, to the date of actual settlement in 1893, and not merely to the date of filing in 1895.

It was also shown that William H. Wadkins, the patentee, sold and conveyed the land by general warranty deed, assuming to have entire and perfect title, and that the defendants as owners and lessees hold by regular chain of mesne conveyance (Printed Record, 23, 29-42).

And the question for decision was whether or not the land became community property under the laws of Louisiana, so as to entitle the child Effie Bell Wadkins to an interest of one-half, regardless of her father's deeds.

The district court held in favor of the plaintiff, giving judgment for a half interest in the land and *in solido* against both defendants for $86,328.24, that being one-half of the net amount realised from oil produced. But the Supreme Court reversed this judgment, rejected the plaintiff's de-

mand, and dismissed the petition in both courts. It was there ruled that neither the entryman nor the community of acquets and gains had title prior to the completion of the five years' occupancy, and that none afterwards passed to the community by relation, the opinion being delivered by Chief Justice Breaux. On motion for rehearing it was in substance stated, in an opinion by Mr. Justice Provosty, that, relating back, the title would be deemed initiated at the time when the actual occupancy began, and not when the filing was made; and that no interest was acquired by the community. The court was at all times unanimous in the holding that the land was never community property. And it is this judgment that the plaintiff in error here seeks to have reversed. But the petition on which the case is brought here does not state that the validity of any Federal statute was denied or that there was a ruling against any claim asserted under Federal authority (Printed Record, 72-73).

ARGUMENT.

The petition may show argumentatively that a Federal question was involved; and this showing might be sufficient to give one of the district courts original jurisdiction; but there is disclosed no basis whatever for a writ of error to the supreme court of a State. The vital defect is in the failure to show that the decision complained of was against the validity of anything Federal.

It was not enough to show that a Federal question was involved and decided. There must have been a holding against the validity of some Federal statute or against something asserted under Federal authority. Something Federal must have been struck down.

We shall not dwell on the form of the petition, which does not even contain the language of a clause of the statute, stated merely as a conclusion, but, without waiving the point, shall refer to the case as it might have been described.

The plaintiff's claim was under the laws of Louisiana, and his complaint is that the laws of Louisiana were not given effect. His theory was that the Federal statute is silent in regard to the beneficial ownership in a case of this kind, thus leaving room for the State law to operate. The decision was that the Federal act is not silent, but excludes and renders inoperative the State statute. And it is therefore submitted that this was a decision against, not a Federal claim, but a State claim.

True, the plaintiff, for the minor, was, in a sense, asserting title under the Federal statute and the Federal patent, but he did not assert that either the statute or the patent, by its own force and independently of the State law, vested any title in the child. So far as that statute and the patent were concerned his case was the same as if the facts had arisen in a common law State. And the decision was not against him on that part of the case.

Only to the extent that the patent passed the title out of the Federal government did the plaintiff claim under a Federal law or authority, and there was no decision against him on that point.

Railroad vs. Hopkins, 130 U. S., 210 (32 L. ed., 908).
Avery vs. Popper, 179 U. S., 305 (45 L. ed., 203).
Kennard vs. Nebraska, 186 U. S., 304 (46 L. ed., 1175).
Baker vs. Baldwin, 187 U. S., 61 (47 L. ed., 71).
Hooker vs. Los Angeles, 188 U. S., 314 (47 L. ed., 487).

On the proposition that the supposed Federal question

has been foreclosed we could not expect the court to consider at this time a full review of the authorities.

However, we do feel warranted in saying that for many years it has been settled that to lands entered under the homestead law no title or estate of inheritance vests in anyone prior to a completion of the statutory occupancy of five years.

It was, however, in recent years contended, and some of the courts in States where there were laws of community property held, that when a title did finally pass from the government it might relate back, and, in a proper case, though issued to a widower or widow, vest the property in the former community.

McCune vs. Essig, 199 U. S., 382 (50 L. ed., 237), involved that question, and arose in connection with the proposed application of a community property law. Its facts were that during marriage William McCune, proceeding under the identical statute which Wadkins acted under, settled on a tract of public land in the State of Washington and made proper filing in the land office. Before five years had elapsed he died. Mrs. McCune (afterwards Donohue) finished the term of occupancy and obtained a patent in her own name. There, as here, a daughter of the marriage claimed an undivided one-half interest in the land on the theory that it was community property, and the debated question was whether the doctrine of relation applied when the patent finally did issue.

This court ruled in the negative, the opinion being written by Mr. Justice McKenna, who, on the question of relation, said:

> "Against the effect of the patent conveying title to Mrs. Donohue, appellant invokes the doctrine

of relation. It is admitted 'that the title to the real estate in the case at bar passed and vested according to the laws of the United States by patent.' But it is contended that, a beneficial interest having been created by the State law in McCune, when the title passed out of the United States by the patent it 'instantly dropped back in time to the inception or initiation of the equitable right of William McCune, and that the laws of the State intercepted and prevented the widow from having a complete title without first complying with the probate laws of the State.' This, however, is but another way of asserting the law of the State against the law of the United States, and imposing a limitation upon the title of the widow which Section 2291 of the Revised Statutes does not impose. It may be that appellant's contention has support in some expressions in the State decisions. If, however, they may be construed as going to the extent contended for, we are unable to accept them as controlling."

As to the meaning of the statute and the supremacy of the Federal law it was observed:

"It requires an exercise of ingenuity to establish uncertainty in these provisions. They say who shall enter, and what he shall do to complete title to the right thus acquired. He may reside upon and cultivate the land, and by doing so is entitled to a patent. If he die, his widow is given the right of residence and cultivation, and 'shall be entitled to a patent, as in other cases.' He can make no devolution of the land against her. The statute which gives him a right, gives her a right. She is as much a beneficiary of the statute as he. The words of the statute are clear, and express who in turn shall be its beneficiaries. The contention of appellant reverses the order of the statute, and gives the children an interest paramount to that of the widow through the laws of the State.

"The law of the State is not competent to do this. As was observed by Circuit Judge Gilbert:

'The law of the State of Washington governs the descent of lands lying within the State, but the question here is whether there had been any descent of land.' And, against application of the State law, the learned judge cited Wilcox vs. Jackson, 13 Pet., 517; 10 L. ed., 273, and Bernier vs. Bernier, 147 U. S., 242; 37 L. ed., 152; 13 Sup. Ct. Rep., 244. In the former it was said that whenever the question is whether title to land which had been the property of the United States has passed, that question must be resolved by the laws of the United States; but that whenever, according to those laws, the title shall have passed, then, like all other property in the State, it is subject to State legislation. In Bernier vs. Bernier it was said that the object of Sections 2291 and 2292 was 'to provide the method of completing the homestead claim and obtaining a patent therefor, and not to establish a line of descent or rules of distribution of the deceased entryman's estate.' See Hall vs. Russell, 101 U. S., 503; 25 L. ed., 829."

Now, in view of that decision, there is at this time no open question, unless it can be said that there is room for an argument to the effect that Congress meant that in States having systems of community property the children of an entryman should take if their father died, but should not take if their mother died.

In other words, that case deals with the question where the father has died pending the five years' occupancy, while in the instant case it was the mother who died.

Of course, in precision there is a difference, but it is thought to be a difference of scarcely greater dignity than that which exists by reason of the fact that the litigants have different names or the happening that the cases arose in different States.

A mere glance at the statute will show that there is no

reasonable ground for distinction or differentiation in principle, or room for argument on that score.

For convenience of the court the relevant sections of the homestead act are here quoted at length:

> "Sec. 2291. No certificate, however, shall be given or patent issued therefor until the expiration of five years from the date of such entry; and if, at the expiration of such time, or at any time within two years thereafter, the person making such entry, or, if he be dead, his widow, or, in case of her death, his heirs or devisee, or, in case of a widow making such entry, her heirs or devisee, in case of her death, prove by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit, and makes affidavit that no part of such land has been alienated except as provided in Section twenty-two hundred and eighty-eight, that he, she or they will bear true allegiance to the Government of the United States, then, in such case, he, she or they, if, at that time citizens of the United States, shall be entitled to a patent as in other cases provided by law.
>
> "Sec. 2292. In case of the death of both father and mother, leaving an infant child or children under twenty-one years of age, the right and fee shall inure to the benefit of such infant child or children."

Note the language:

> "Then, in such case, *he, she or they,* if at that time citizens of the United States, shall be entitled to a patent as in other cases provided by law."

And there is no mental process by which this can be held to mean the children, or partly in trust for them, when it says *"he,"* and yet mean the widow, and only the widow, when it says *"she."*

If Congress had spoken in reference to the sole contingency of the husband's death, and had remained silent as to who would take title if he lived, there might be some room for the assertion that the State laws could be given effect and make the land community property. But all possibility of such a theory disappeared when, in ringing language, it was said in effect that if living *"he"* would get title.

Not only was it thus stated, but it was stated in the same sentence—in the same breath—with the statement that in the other and corresponding contingency *"she"* would get title; and the meaning of one part of the sentence must be determined by the same rule that determines the other part.

Hence it is submitted that there is no room for the anomaly—the spectacle of children taking through their mother when they can not take through their father—and that any attempt to reach such result would be not only frivolous but absurd.

Since the decision of this court in McCune vs. Essig the Supreme Court of Louisiana is not the only court that has considered the question settled, and that the same rule must apply regardless of which spouse may die and leave the other to complete the occupancy, for in Cunningham vs. Krutz, 83 Pac., 109, reported also in 7 L. R. A. (N. S.), 967, the Supreme Court of Washington had before it a case in which, as here, the wife had died, and in which the surviving entryman had commuted his entry and obtained a patent, and the decision was against the community claim; apparently the court considered the ruling of McCune vs. Essig as applicable in the one case as in the other.

In truth, an application of the community law is impos-

sible. It contemplates that the survivor of the marriage and the children shall hold as tenants in common. But this statute is worded so that the survivor and the children can not take in that manner. No matter which spouse dies the survivor takes to the exclusion of the children. They can take only at his or her death, and insurmountable difficulties would block any attempt to apply the community law.

To further illustrate, say Wadkins had married the second time and died before completion of the five years' occupancy, leaving his second wife surviving him: Under the plain letter of the homestead statute she would be entitled to complete the occupancy and take title, to the entire exclusion of the child of the first marriage and the absolute displacement of the community law.

Again, Section 2292 provides that the title shall go to the minor child or children when both father and mother are dead, whereas the community law makes no distinction between minors and children who have reached their majority.

It is apparent, therefore, that until the full term of occupancy has expired the beneficiary may change as deaths, births and marriages occur. During this time the Federal statute is constantly pointing out the beneficiary and can not be displaced. It does not have a suspended animation. Nor does it change with the varying laws of the different States. And regardless of whether the State law provides for community property or furnishes some radically different system, the Federal statute must be consulted in every event of the kind mentioned. It assumes to cover and does adequately comprehend all contingencies, including the

one that has happened here.

The illustration of the entryman marrying the second time, and then dying and his second wife taking title, shows that up to completed occupancy the tenure of the entryman himself, as well as the tenure of his wife and others, is subject to the Federal law.

Then, again, there is the fact that this title was initiated when Wadkins was single, which brings us to the fourth ground of the motion.

It was once the rule that a title under the homestead act was deemed initiated at the date of formal filing in the land office, and not at the date of settlement upon the land. However, in 1880, an amendatory act was passed, and in Section 3 it provides (italics ours):

> "That any settler who has settled, or who shall hereafter settle, on any of the public lands of the United States, whether surveyed or unsurveyed, with the intention of claiming the same under the homestead laws, shall be allowed the same time to file his homestead application and perfect his original entry in the United States Land Office as is now allowed to settlers under the pre-emption laws to put their claims on record, *and his right shall relate back to the date of settlement, the same as if he settled under the pre-emption laws.*" (Chap. 89, 21 Stat. at L. 141; U. S. Comp. Stat., 1901, p. 1393.)

In Maddox vs. Burnham, 156 U. S., 546 (39 L. ed., 527), and Nelson vs. Railway, 188 U. S., 108 (47 L. ed., 406), the court noticed this language and gave it effect.

In Railway vs. Donohue, 210 U. S., 30 (52 L. ed., 945), which involved the priority of right between an entryman and a railway company, the latter claiming under a statute allowing it to select indemnity lands, the present Chief

Justice delivered the opinion of the court, and on this point stated:

> "It was not until May 14, 1880, that a homestead entry was permitted to be made upon unsurveyed public land. The statute which operated this important change moreover modified the homestead law in an important particular. Thus, for the first time, both as to the surveyed and unsurveyed public lands, the right of the homestead settler was allowed to be initiated by and to arise from the act of settlement, and not from the record of the claim made in the land office."

And in the still more recent case of Osborn vs. Froyseth, 216 U. S., 576 (54 L. ed., 623), which was a somewhat similar controversy, the court ruled

> "Under the act of May 14, 1880, the right of one settling in good faith for the purpose of claiming a homestead 'relates back to the date of settlement.' Nelson vs. Northern P. R. Co., 188 U. S., 108; 47 L. ed., 406; 23 Sup. Ct. Rep., 302; Sjoli vs. Dreschel, 199 U. S., 564; 50 L. ed., 311; 26 Sup. Ct. Rep., 154; St. Paul M. & M. R. Co. vs. Donohue, 210 U. S., 21; 52 L. ed., 941; 28 Sup. Ct. Rep., 600."

If it is suggested that because the act of May 14, 1880, says the right shall relate back as under the pre-emption laws, and that under those laws title was deemed initiated at the date of filing, our reply is that the act also expressly states that the right shall relate back to the date of settlement, which is very specific and should control, and this must have been in mind when the court rendered the decisions last cited.

All of which is respectfully submitted.

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FILED
DEC 14 1912
JAMES H. McKENNEY,
Clerk.

No. 926.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1912.

William H. Watkins, Natural Tutor of Miss Belle Watkins, Minor, Plaintiff in Error,

vs.

Producers Oil Company and Atlanta & Shreveport Oil and Gas Company.

In Error to the Supreme Court of the State of Louisiana.

A. L. BEATY,
HERNDON & HERNDON,
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Attorneys for Producers Oil Co., and the Atlanta & Shreveport Oil & Gas Co., Defendants in Error.

No. 638.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1912.

William H. Wadkins, Natural Tutor of Effie Belle Wadkins, Minor, Plaintiff in Error,

vs.

Producers Oil Company and Atlanta & Shreveport Oil and Gas Company.

In Error to the Supreme Court of the State of Louisiana.

Brief and Argument by Producers Oil Company and Atlanta & Shreveport Oil & Gas Company, Defendants in Error, on motion to dismiss writ of error from State Court, or in the alternative to summarily affirm the judgment of the Supreme Court of Louisiana.

Statement.

The proceedings sought to be reviewed herein, had in the Supreme Court of the State of Louisiana,

were on appeal from a judgment of the district court for the Parish of Caddo, rendered in a cause wherein William H. Wadkins, as natural tutor of Effie Belle Wadkins, a minor, was plaintiff, and these defendants in error were defendants, involving an undivided one-half interest in 160 acres of land situated in Caddo Parish, and a like proportion of the value of the oil taken therefrom.

The undisputed facts, as pleaded, and stipulated, or proved on the trial, were that the land in controversy was a part of the public domain of the United States, and subject to entry under the homestead laws when, on the first day of August, 1893, said William H. Wadkins, then a single man, but capacitated to make a homestead entry, took possession, with the intention and purpose of entering it as a homestead; that on the 24th day of June, 1894, said William H. Wadkins married Mary Jane McCatheron; that on the 23rd day of February, 1895, he filed his formal application of homestead entry, which, two days later, was duly allowed, and certificate of entry issued; that on the 5th day of December, 1896, his wife, the said Mary Jane, died intestate; that on the 19th day of September, 1898, he made final proofs, including a showing of the five years occupancy required by statute, and thereafter a patent for the land was issued to him; that two children had been born of the marriage aforesaid, namely, Effie Belle Wadkins, born on the 28th

day of March, 1895, and another who died when about two years of age; and that Wadkins remarried in 1903. (Printed Record, p. 22).

Thus it is seen that the entryman was single when he made actual settlement on the land, but was married at the date when his formal application was filed, and he was a single man when the statutory occupancy was completed, and proof thereof was made and the patent obtained; and it also appears that when he made his proof of occupancy on the 19th day of September, 1898, the time of occupancy was recokned back, as the law provides, to the date of actual settlement in 1893, and not to the date of filing 23rd day of February, 1895.

It was also shown that William H. Wadkins, the patentee, after the issuance of the patent, sold and conveyed the land in controversy by general warranty deed, assuming to have entire and perfect title, and that the defendants as owners and lessees hold by regular chain of mesne conveyances. (Printed Record, pp. 23, 29, 40, 41, 42).

And the question for decision was whether or not the land became community property under the laws of Louisiana, so as to entitle the child, Effie Belle Wadkins, to an interest in one-half, regardless of her father's deeds.

The District Court held in favor of the plaintiff, giving judgment for a half interest in the land, and

insolido against both defendants for $86,328.24, that being one-half of the net amount realized from oil produced. But the Supreme Court of Louisiana, reversed this judgment, rejected the plaintiff's demand, and dismissed the petition in both courts. It was there ruled that neither the entryman nor the community of acquets and gains had title prior to the completion of the five years occupancy, and that none afterwards passed to the community by relation, the opinion being delivered by Chief Justice Breaux. On motion for rehearing it was in substance stated in the opinion by Mr. Justice Provosty that, relating back, the title would be deemed initiated at the time when the actual occupancy began, while Wadkins was a single man, and not when the filing was made in the land office after his marriage; and that no interest was acquired by the community. The Court was at all times unanimous in holding that the land was never community property. And it is this judgment that the plaintiff in error here seeks to have reversed. But the petition on which the case is brought here does not state that the validity of any federal statute was denied, or that there was a ruling against any claim asserted under Federal Authority. (Printed Record, pp. 72-73).

Argument.

The petition for writ of error may show argumentatively that a federal question was involved; and this showing might be sufficient to give one of the dis-

trict courts original jurisdiction, but there is disclosed no basis whatever for a writ of error to the Supreme Court of the State. The vital defect is in the failure to show that the decision complained of was against the validity of any thing federal.

It was not enough to show that a Federal question was involved and decided. There must have been a holding against the validity of some Federal Statute or against something asserted under Federal authority. Something Federal must have been struck down.

We shall not dwell on the form of the petition, which does not even contain the language of a clause of the statute, stated merely as a conclusion, but, without waiving the point, shall refer to the case as it might have been described.

The plaintiff's claim was under the laws of Louisiana, and his complaint is that the laws of Louisiana were not given effect. His theory was that the Federal Statute is silent in regard to the beneficial ownership in a case of this kind, thus leaving room for the State law to operate. The decision was that the Federal Act is not silent, but excludes and renders inoperative the State Statute. And it is therefore submitted that this was a decision against, not a Federal claim, but a State claim.

True, the plaintiff, for the minor, was, in a sense, asserting title under a Federal Statute and the Federal Patent, but he did not assert that either the Statute or

the patent, by its own force and independent of the State law, vested any title in the child. So far as that statute and the patent were concerned the case was the same as if the facts had arisen in a common law state. And the decision was not against him on that part of the case.

Only to the extent that the patent passed the title out of the Federal Government did the plaintiff claim under a Federal Law or authority, and there was no decision against him on that point.

Ry. Co. v. Hopkins, 130 U. S., 210 (32 L. Ed. 908).

Avery v. Popper, 179 U. S., 305 (45 L. Ed. 203).

Kennard v. Nebraska, 186 U. S., 304 (46 L. Ed. 1175).

Baker v. Baldwin, 187 U. S., 61 (47 L. Ed. 71).

Hooker v. Los Angeles, 188 U. S., 314 (47 L. Ed. 487).

On the question decided by the State Court, that the entryman who enters a homestead claim, under the Federal Homestead law, has no devisable interest in the land entered until he has completed his five years occupancy, we will state that the question has been foreclosed by this Honorable Court and is no longer an open question.

In the well-considered case of Hall v. Russell, 101 U. S., 503, 25 L. Ed. 829, this Court held that an entryman under the Donation Act had nothing but a possessory right prior to the time that the four years re-

quired possession was completed by the settler. In that case the husband died before the four years occupancy, under the Donation Act, was completed, and the Court held that he had no divisable interest in the property, and that the interest which the widow and heirs might take under the 8th section of the Donation Act upon a residence of less than four years by the deceased husband was as donees of the Government and not by descent. The rule laid down in this case has been uniformly followed by this court down to the present time.

In the subsequent case of Maynard v. Hill, 125 U. S., 190, 31 L. Ed., the evidence in the case showed that the wife was divorced before the required four years occupancy under the Donation Act was completed, and the husband completed his four years occupancy after the marriage was dissolved by the court, and the court held the wife had no interest in the land, because her husband was not a grantee when the divorce was granted, as at said date he had not occupied and cultivated the land the required four years, and at the date of the divorce he had only a possessory right, and a promise of a title if he would complete his four years occupancy and cultivation. The court said in part:

"When therefore the Act was passed divorcing the wife and husband he had no vested interest in the land, and she could have no interest greater than his. Nothing had been acquired by his residence and cultivation which gave him anything more than a posses-

sory right, a right to remain on the land so as to enable him to comply with the condition upon which the title was to pass. After the divorce she had no such relation to him as to confer upon her any interest in the title subsequently acquired by him, it follows that the wife was not entitled to the East half of the Donation claim. To entitle her to that half she must have continued to be his wife during his residence and cultivation of the land." (Ry. Co. v. U. S., 190, U. S., 195).

The only difference that we can see in the case of Maynard v. Hill, and the case under consideration is that the marital relations existing between Maynard and his wife were dissolved by divorce before the completion of the required occupancy and in the case at bar the marital relations were dissolved by the death of the wife before the completion of the occupancy of the homesteader. A dissolution of the marriage by divorce, as well as by death, ends all rights not previously vested.

In the recent case of McCune v. Essig, 122 Fed. Rep., 588, the evidence showed that the husband died before the five years occupancy under the homestead act had been completed, and the Circuit Court of Appeals for the ninth district, following the rule announced in the case of Hall v. Russel, held that the husband had no interest in the land at his death, and that under the homestead act his wife, as a new homesteader, was entitled to all the land that he had entered under the homestead act, to the exclusion of their child, the issue of said marriage. The court said in part:

"The case of Hall v. Russel, 101 U. S., 503, is, we think, **directly in point.** That was a case which involved the construction of the Donation Act, an act in which the terms of the grant are much stronger than in the case of the homestead law, the language thereof being, 'There shall be, and hereby is, granted, the grantee being any qualified settler or occupant on the public land, who shall have resided upon and cultivated the same for four consecutive years, and shall otherwise conform to the provisions of this act.' It further provided that if a settler died before the expiration of the required four years of continued possession, all his right should descend to the heirs at law, including his widow. The court held that until such settler was qualified to take there was no actual grant of the land, and that if such a settler should die after a residence thereon of less than the required four years, that he had no devisable interest therein."

The case on appeal to this Honorable Court was affirmed, the Court citing with approval the case of Hall v. Russel, supra; McCune v. Essig, 199 U. S., 582, 50 L. Ed., 436. The opinion in this case was written by Mr. Justice McKenna, who on the question of relation said.

"As against the effect of the patent conveying title to Mrs. Donoho appellant invokes the doctrine of relation. It is admitted that the title to the real estate in the case at bar passed and vested according to the laws of the United States by patent. But it is contended that, a beneficial interest having been created by the State law in McCune, when the title passed out of the United States by the patent it instantly dropped back in time to the inception or initiation of the equitable right of Wm. McCune, and that the laws of the State intercepted and prevented the widow from having a complete title without first complying with the probate laws of the State. This, however, is but another way of asserting the law of the State against the

law of the United States, and imposing a limitation upon the title of the widow, which section 2291 of the revised statutes does not impose. It may be that the appellant's contention has support in some expression in the State decisions. If, however, they may be construed as going to the extent contended for, we are unable to accept them as controlling."

In the McCune case above referred to Wm. McCune during his marriage settled upon a tract of public land in the State of Washington, and made proper filing in the land office. Before five years had elapsed he died, leaving surviving him his wife and a daughter, and under the rulings of the Circuit Court of Appeals and this Honorable Court the surviving wife of Wm. McCune took the entire land entered by him to the exclusion of her daughter, the issue of said marriage. It is too clear for argument that if the homestead act had not made provisions for substituted beneficiaries, when McCune died his claim to the land entered under the homestead act, together with all improvements placed on the same by him, would have reverted to the government, and been subject to re-entry by another homesteader, and neither his surviving wife nor child would have had any claim to the land as heirs of the said Wm. McCune, deceased.

It is admitted that the wife of Wadkins died nearly two years before the completion of his five years occupancy. If he had married a second wife and died before completing his five years occupancy under the homestead law, his second wife would have taken

the entire 160 acres of land to the exclusion of Effie Wadkins, plaintiff herein, and his child by his first wife. And if after said Wm. Henry Wadkins died his second wife had died before the completion of the five years occupancy leaving brothers and sisters as her only heirs her said brothers and sisters under the homestead law would have been entitled to the 160 acres of land to the exclusion of Effie Wadkins.

From the foregoing illustrations it will be seen that under the homestead act there cannot be a present grantee, and that there is under the law really no grantee, until the five years occupancy has been completed. Every time a homesteader dies prior to the completion of the claim the homestead law points out a new beneficiary and said homestead law controls until the title has been earned. And under the said law it is utterly impossible, prior to the completion of the occupancy, for any one to acquire an interest in the land by the law of descent and distribution of the State where the land is situated.

The case of McCune v. Essig arose in Washington Territory where the community system prevailed at said date, and since the said decision by this court, the Supreme Court of Washington has uniformly held that the homesteader has no title to the land entered by him until the five years possession required by the homestead law has been completed, and in order for the land to fall into the community the wife must remain the

wife of the homestead entryman during the entire five years of occupancy. Hall v. Hall, 41 Wash., 153, 83 Pac., 108; Cunningham v. Krutz, 41 Wash., 190, 83 Pac., 109, 7 L. R. A. (N. S.) 967.

After the entryman has completed the full term of his occupancy then he has an equitable title, whether the patent has issued or not. Brazee v. Schoolfield, 124 U. S., 495; 31 L. Ed., 484; Hays v. Wyatt et al., 111 Pac., 13.

It has long been the law of Louisiana that where one spouse initiates the title to land before marriage that the property when the title is perfected belongs to the spouse initiating the same. Barbet v. Langlois, 5 La. Ann., 212; Succession of Morgan, 12 La. Ann. 151. The Supreme Court of Louisiana in the case at bar held in effect that if at the date that the wife of Wm. H. Wadkins departed this life he held an equitable title to the land in controversy that the land would still be the separate property of said W. H. Wadkins, who initiated the title before he married, the court holding that under Federal homestead law, the title was initiated when Wadkins settled upon the land August 1st, 1893. Since the act of May 14th, 1880, this court has uniformly held that the homestead right is initiated and arises from the act of settlement and not from the record of the claim made in the land office. St. Paul M. & N. Ry. Co .v. Donoho, 210 U. S., 21; 52 L. Ed., 941; Nelson v. Northern Pacific Ry. Co.,

188 U. S., 108; 47 L. Ed., 406; Sjoli v. Dreschel, 199 U. S., 564, 50 L. Ed., 311; Osborne v. Froyseth, 216 U. S., 570; 54 L. Ed., 619.

In the last case the facts showed that on May 15th, 1889, one Froyseth being in every way qualified entered upon the land which was in controversy in said suit with the intention of claiming it as his homestead, and had continually occupied it down to the trial of the cause; that on Oct. 29th, 1891, two years five months and 14 days after Froyseth had settled on the land, the Hastings & Decatur Ry. Co. attempted to select the land. On November 3rd, 1891 (after the selections by the Railway Company), Froyseth offered at the proper land office a homestead entry in due form for said land. This was rejected solely on the ground that the said land was withdrawn from settlement, and that the land was not subject to entry by another person from said date. The court held that notwithstanding the land had been patented to the Ry. Co., and notwithstanding the homestead entry had been rejected by the land office, said Froyseth was entitled to recover the land, that said Froyseth having settled on the land before the time the same was selected by the Ry. Co. with the intent to claim it as a homestead the land had ceased to become public land and as such subject to selection as lieu land. The construction put upon the act of 1880 by this court is the proper construction of said act, and the rule laid down has be-

come a rule of property. Since these decisions have been rendered many people have entered lands under the homestead act and have not filed their claims in the proper land office thinking that their occupancy was notice to other parties who desired to secure such lands, and that they could file their entry of the land in the land office at any time before their five years occupancy had been completed, and that their entry would date from the day they entered upon the land and improved it with the intention of securing it under the homestead act.

The fact being agreed that Wm. H. Wadkins entered upon this land August 1st, 1893, while he was a single man, the land in controversy would be his separate property, even if the plaintiff in error is right in his contention that W. H. Wadkins had the equitable title when his wife died. And the question having been foreclosed by this court there can be no longer any question for this court to pass on in this case and it ought to be affirmed, if the court does not dismiss it.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 638.

WILLIAM H. WADKINS, NATURAL TUTOR OF EFFIE BELL WADKINS, MINOR,

PLAINTIFF IN ERROR,

vs.

PRODUCERS OIL COMPANY AND ATLANTA & SHREVEPORT OIL AND GAS COMPANY.

IN ERROR TO THE SUPREME COURT OF LOUISIANA.

REJOINDER FOR DEFENDANTS IN ERROR.

On a previous day the defendants in error moved to dismiss, and the case was placed on the summary docket, where it is now assigned for argument.

In reply to the brief filed for the plaintiff in error on the motion to dismiss—no other brief or printed argument on his behalf has been served—the present writer will say at the outset that the questions discussed and decided by the Supreme Court of Louisiana are not the only questions in the

case. Defendants in error contended in their answers, and introduced proof to show, that they and their predecessors in title were *bona fide* purchasers for value, and as such were entitled to protection, because the interest, if any, of the minor, Effie Bell Wadkins, was not disclosed by the records, it appearing that the patent ran to William H. Wadkins, her father and their remote grantor, and that it was issued after the death of her mother. There were also contentions by the defendants in error that in no event were they liable *in solido* on the moneyed claim, and each contended that the other, if any one, was liable to the plaintiff. The arguments on the questions thus raised were not brought forward, as it was assumed that if this court should find it necessary to reverse the judgment of the Supreme Court of Louisiana it would send the case back for a decision of such questions there, none of them having been reached on the previous occasion when the case was before that court.

There are three subjects discussed by counsel for the plaintiff in error on which replies will be offered, namely, (1) the jurisdiction of the court, (2) relation of title back to date of filing, and (3) relation back to date of settlement, and these will be presented in the order stated.

I.

The Jurisdiction of the Court.

The point intended to be made in the previous argument for this side, stated in somewhat different phrases, is that the only title, right, privilege, or immunity claimed by the plaintiff in error under the Constitution or laws of, or authority exercised under, the United States, was that evidenced by the patent so far as it divested title out of the United States, and that on this point there has been no decision against him.

Did the plaintiff in error claim anything more under the Federal homestead law than that title had passed out of the Government? Was not the remainder of his claim based on the laws of Louisiana? And was it not in respect to the last, and to the last only, that the decision was against him? It cannot be said that there was an issue as to the passing of title from the Government. Both sides took the position that there had been a grant. Defendants in error insisted that it should be construed as it read, that is, as vesting title in William H. Wadkins, the grantee named, while the plaintiff in error asserted that, because of the intervention and operation of a State law, other grantees should be read in. The court decided against this latter contention, which, it is submitted, was no more nor less than a decision against a claim made under the State law.

Opposing counsel have sought to meet the argument by saying that the decision of the Supreme Court of Louisiana did not turn on the fact that the wife died before the statutory occupancy was complete, but turned on the fact that Wadkins settled on the land before the marriage, thus indicating a claim on the part of the plaintiff in error that the title, though relating back to the date of filing, did not relate back to the date of settlement, as provided by the act of Congress approved May 14, 1880, and a decision against his Federal claim under this Federal law. But are they correct in regard to the ground of the decision? True, they have some support in the opinion delivered by Mr. Justice Provosty on motion for rehearing. He said in effect that the court had decided on the original hearing that the land was separate property because settled upon before marriage. But a glance at the original opinion delivered by Mr. Chief Justice Breaux will disclose that the court had decided broadly that the law of Louisiana could not be asserted. Notwithstanding the statement of counsel to the contrary, this was, at least at one time, the opinion of the court, and the record so shows. The effect to be given the statement of one

justice, even if concurred in by a majority, that the court had not decided a point which the record shows had been decided, is something that will not be argued.

II.

Relation of Title Back to Date of Filing.

"The retroactivity of the accomplishment of the suspensive condition," in Louisiana law and as applied or attempted to be applied to this case, if correctly understood by the writer, means simply the doctrine of relation.

That such doctrine could not be applied in favor of the child if Wadkins had died and his widow had completed the occupancy and obtained the patent is settled by the decision of this court in *McCune vs. Essig*, 199 U. S., 382 (50 L. Ed., 237).

It is argued, however, that the result there reached was due to the fact that the Federal statute points out a new beneficiary in case of the entryman's death, whereas, counsel assert, it contains no evidence of a purpose to restrict the benefits to the entryman in case he survives and takes the patent.

The brief accompanying the motion to dismiss pointed out certain evidences in the statute of an intention to restrict the benefits to the entryman (the statement that *he* shall take title, if surviving, and the fact of the statement being in the same connection where it is said that in case of his death, the wife surviving, *she* shall take title), and also showed the inequitable results to which the contention of the plaintiff in error would lead in States where laws of community property prevail (that children would acquire a half interest if, as here, the mother should die, whereas they would acquire no interest whatever if, as in the *McCune Case*, the father should die), and those arguments will not be repeated. They are referred to here in order that the

thread of the discussion may be regained, and to preface the additional suggestion that if the plaintiff in error, on behalf of the child, prevails in this case, it will be because of the law of Louisiana; that law, the very one now invoked, gives the child the same right on the death of either parent; and it is admitted by counsel that if Wadkins had died the child would have acquired no interest in the land, except, of course, as she might have completed the occupancy and made proof as a direct beneficiary of the statute. In other words, the plaintiff in error is in the position of contending that the Federal law is operative and points out a beneficiary in the one contingency, but is silent and designates no beneficiary, leaving the State law to do so, in the other and corresponding contingency; that the two systems are to be pieced together, regardless of the fact that they produce an inequality which is contemplated by neither, and that such was the intention of Congress.

The plaintiff in error bases his case on the proposition that even before the five years of occupancy had elapsed there was a vested right, and apparently it is the view of counsel that they have crossed the danger line when it is shown that Wadkins had a vested right from the date when he filed his application. But did the wife, and through her the child, have a vested right at that time? That is the question. Several decisions of this court are cited to sustain the contention that the homestead entryman has a vested right, but none of them holds that prior to his death or the completion of five years' occupancy his wife or child has a vested right. The point is that the Federal statute places the right, if any, in the entryman, and precludes the vesting of any right in his wife or child, except such as they may take at his death as direct beneficiaries of the statute, and their rights do not vest until that time. Whatever right is vested in the entryman is not an estate of inheritance. It is personal to him, and is so hedged about that no application of the doctrine of relation can be predicated upon it in favor of others.

One is said to acquire an estate as of an earlier date because it was in process for his benefit at such date. But here the estate, though in process, was not for the benefit of anyone except the entryman. To say that it was in process for the benefit of his wife or child would be to assume the very thing in dispute. And it is submitted that no such assumption can be made without also doing violence to every rule of logic and rational thought.

The illustration given in the previous argument is as good as any that could be employed here. Suppose after the death of his wife, Mary Jane, and before completing the five years of occupancy, Wadkins, having married again, had died. Under the plain letter and repeated interpretation of the Federal act the child Effie Bell, would have taken no estate whatever; for the second wife would have possessed the exclusive right of completing the occupancy, making proofs, and taking patent in her own name. This shows that the nucleus, the inchoate right, the something on which the claim of the minor in the present case is builded, was of such nature as to become the basis of an estate for some other person instead of her upon the happening of an event.

Of course, the argument of opposing counsel is appreciated here. They take the position that, where, as in the *McCune Case*, the entryman dies, the suspensive condition is not accomplished, but is defeated, whereas when he lives and goes on and perfects his title, as in the case at bar, the condition is accomplished. But even if he does survive, the Federal statute leaves no room for the doctrine of relation in favor of beneficiaries other than the entryman. The title may relate back, to be sure, but it relates back in favor of the entryman alone. Such, it is submitted, is the only fair meaning of the Federal statute.

The retroactive accomplishment of the suspensive condition is no direct part of the community property law. On the contrary, that law contemplates the immediate vesting of a like interest in each spouse the instant the initial prop-

erty right is acquired. When the Federal law prevents that result there is no room for the retroactive theory in favor of those originally excluded.

Counsel say that their distinction is the logical result of two decisions rendered by the Supreme Court of Louisiana, one being *Crochet vs. McCamant,* 116 La., 1, and the other *Richard vs. Moore,* 110 La., 435. But the justice who delivered the opinion in *Richard vs. Moore,* by his opinion delivered in this case, has repudiated the suggestion. Furthermore, it is rather extraordinary to cite as authority the holding of the court whose decision on the very point is under review. And, again, the decision proper in *Crochet vs. McCamant* is consistent with *Richard vs. Moore,* because in *Crochet vs. McCamant* the period of occupancy was complete and there lacked only the formal proofs when the wife died (*Brazee vs. Schoefield,* 124 U. S., 495; 31 L. Ed., 484).

It is considered unnecessary to further discuss principles when a decision of this court can be cited.

In the case of *Maynard vs. Hill,* 125 U. S., 190 (33 L. Ed., 654), which arose under the Oregon Donation act, it appeared that the entryman was married at the date of his entry. At a later date, but before the full period of his occupancy of the land had elapsed, his wife was divorced. He thereafter completed the occupancy and obtained a patent. It was held that the wife had no interest in this land. And, as the court has doubtless observed, that was a case in which the entryman had survived and obtained the patent.

III.

Relation Back to Date of Settlement.

After contending that the doctrine of relation will apply so that the patent obtained by Wadkins must be deemed to relate back to a date prior to its issuance, namely, the date when the claim was filed in the Land Office, the plaintiff in error turns abruptly around and asserts that the doctrine of relation will not apply so as to fix the rights of the parties

according to the status at a still earlier date, namely, the date when he settled on the land.

Defendants in error consider themselves consistent in contending here that the doctrine of relation is applicable, because they have not denied at any stage that the title related back, their contention being that in relating back it inured to the benefit of Wadkins (and his assigns) exclusively.

In the previous brief for the defendants in error the statute of May 14, 1880, and the decisions construing that statute, were cited, and it was shown that, as applied to this case, their sum and substance is that the title of W dkins relates back to the date when he settled on the land and was a single man.

Reply has been made on behalf of the plaintiff in error by a reference to the closing words of the statute making the relation the same as if the entryman had settled under the pre-emption law. Counsel say that under the pre-emption law the entryman had no vested right in advance of compliance with the statutory requirements. But when was it decided that a pre-emptor's title does not relate back to the date of settlement, or that his wife or child can establish a community interest in land on which he had settled prior to marriage? It is also argued that by allowing the settler the benefit of any occupancy prior to filing it was the purpose of the Government merely to shorten the period of occupancy in such cases. But what is to be done with the positive language that the right shall relate back to the date of settlement? It cannot very well be denied that the title thus relates back. Nor can it be denied that this retroaction is binding on the Government itself, without going contrary to the decisions of this court, and particularly its decision in *Osborn vs. Froyseth,* 216 U. S., 576 (54 L. Ed., 623).

It would be a digression to follow counsel in the discussion of the supposed difference between homesteaders and pre-emptors, and for the purposes of argument it might be conceded that counsel are correct and the difference exists. But what is the materiality? How does it matter if nevertheless the right relates back to the date of settlement?

Again, this question of title was between Wadkins and his wife and child. They could not invoke the fact, if it was a fact, that the Government could have dispossessed him and made other disposition of the land at any time before he filed his claim. The Government did not take such action. It waived the advantage.

The entryman's title ripens step by step, the first being settlement, another being occupancy, another consisting of filing, and finally there is the making of proofs. Even in the absence of legislative pronouncement there would be strong reasons for a contention that such titles should be deemed initiated at the first essential step. But there is no such absence. Congress has wisely spoken on the very subject. Its language is broad and sweeping. There is no limitation that the right shall relate back to the date of settlement for certain purposes only. The statement is simply that it shall thus relate back. This of course means for all purposes.

It is not a question of whether an entryman can enforce or sustain his possession in advance of filing. A thief of personal property would have no standing in court. The owner, or a purchaser from the owner, or a donee of the owner, could dispossess him and recover it at will. But if, as between the thief and members of his family, it should become necessary to fix the date of acquisition, it is undeniable that the date of taking would control. Especially would this be true if the legislative power had provided for such cases, saying that the right must relate back to the date of taking. *A fortiori* will the entryman's title relate back to the date of settlement.

In this connection some stress has been placed on the language of the Louisiana Code, article 2402. The concluding words are quoted at one place, and there follows the suggestion that the date of *purchase*, the date when the purchase was *contracted*, is the decisive fact. But the language there referred to is only that part of the article that deals with purchases; preceding language covers "the estates which they

may *acquire* during the marriage;" and the case of *Barbet vs. Langlois*, 5 La. Ann., 212, leaves no doubt as to the meaning. There the husband at the date of marriage owned a tract of land on the Bayou Placquemine. By an act of Congress the owners of land fronting on such water courses were given a preference right to purchase land adjacent to and in the rear of their plantations. After marriage the husband purchased from the Government under this act a tract of land adjoining that which he owned. The Supreme Court of Louisiana was called on to decide whether this purchase was separate or community property, it being contended that under this article of the Code the date of purchase controlled. The court ruled that the land was separate property, because the right to purchase it existed prior to the marriage. Pothier was quoted from at length, and it was shown that the date of purchase is not always the test. The court said:

> "It is true that the land was not purchased from the United States until after Langlois married. But the 'cause' of the acquisition may fairly be considered as having preceded the marriage. It was because he was the owner of the front land, an ownership acquired long before, that under the liberal legislation of Congress he was allowed a preference to enter and that, too, at a low price, specific lands which may perhaps have been worth more."

Indeed, that case and those which follow it would seem to be controlling here, even in the absence of the provision of the Federal law that the right shall relate back to the date of settlement, particularly in view of the statement of Mr. Justice Provosty, found at page 69 of the printed record, which is in substance that the codal provisions of the State of Louisiana co-operate with the act of Congress of May 14, 1880.

May the relief sought by the plaintiff in error be denied.

AMOS L. BEATY,
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JANUARY 27, 1913.